

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 146 of 1989
Date of decision : August 26, 2015

Chander Bhan and another

..... Appellant

Versus

Maha Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arun Jain, Senior Advocate with
Mr. Kushagra Mahajan, Advocate
for the appellant.

Mr. Sudhir Mittal, Advocate
for respondent No.1.

Mr. Ashok Jindal, Advocate
for respondent No.6-Gram Panchayat.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The challenge in the present appeal is to the finding rendered by the lower appellate court whereby the judgment and decree of the trial court decreeing the suit of respondent-plaintiff has been set aside.

Mr. Arun Jain, Senior Advocate assisted by Mr. Kushagra Mahajan, Advocate for the appellant-defendant submits that in accordance with the provisions of rule 5 of Punjab Village

Common Land (Regulation) Act, 1961 (hereinafter referred to as 'the Act') in pursuance to the resolution dated 20.5.1983 (Ex. P-10) whereby the land measuring 40 Kanals 4 Marlas belonging to Gram Panchayat was sought to be exchanged with the land measuring 20 Kanals 2 Marlas, owned by the appellants-defendants, which was in the abadi area, the aforementioned resolution had obtained approval of the Government vide notification dated 11.1.1984 Ex.D-1. The suit was filed by the respondent-plaintiff in a representative capacity challenging the said exchange.

He further submits that exchange had actually taken place and effected on the premise that the property which has been given in exchange to the Gram Panchayat, a Panchayat ghar had been raised, thereon, and tubewell existing on the land, belonging to appellant had also been shifted. In this context, he has referred to jamabandi prior and post to the exchange.

He further submits that one of the respondents-plaintiffs Mohinder Singh-PW-1 in the cross examination had also admitted about the exchange and as well as value of the property viz-a-viz of Gram Panchayat. He further submits that jurisdiction of the civil court was expressly barred and therefore, the suit was not maintainable. He further submits that the lower appellate court has failed to refer the documents Ex.D-1 and D-2. Exchange has been reflected in the mutation, recorded on 16.4.1984 and Jamabandi Ex.P-8, shows that the property prior to exchange was in the name of Gram Panchayat. He further submits that the property belonging to the appellant-defendants, was chahi, whereas the property

received in exchange from the Gram Panchayat was banjar. Qadim. Resolution Ex. P-10 dated 20.5.1983 was passed preceding to the approval Ex. D-1 dated 11.1.1984. The land belonging to the appellants-defendants was sought to be acquired under Section 17 of the Land Acquisition Act, 1894 but the same was released on 14.12.1983 vide notification published on 12.1.1984 (Ex. D-5).

He further referred to documents Ex. A-1 to A-6 which has been placed on record by way of additional evidence. The subsequent resolution would show that the appellant shifted his tubwell and the Gram Panchayat has constructed Panchayat ghar. The respondents-plaintiffs admitted that the land belonging to appellant-defendant was 1 ½ K.M. away from the abadi and the lower appellate court has misread the aforementioned document/oral evidence, and therefore committed illegality and perversity. Thus, following substantial questions of law would arise for determination by this Court:-

1. Whether the impugned judgment and decree passed by the lower appellate court decreeing the suit of the respondents-plaintiffs without adverting to the documentary evidence is misdirected and committed illegality or not.
2. Whether the civil court had jurisdiction to entertain and try the suit challenging Ex.D-1 i.e. approval of exchange dated 11.1.1984.

Mr. Sudhir Mittal, learned counsel appearing on behalf of

respondent-plaintiff on the other hand, submits that the appellants-defendants had challenged the acquisition proceedings by filing writ petition in this court i.e. CWP No. 2029 of 1983 and the same was dismissed vide order dated 26.4.1983, thereafter, he managed to get a resolution dated 20.5.1983 from the Gram Panchayat and the land which was sought to be acquired, by the Government, the acquisition vide Ex.D-5 dated 14.12.1983 was withdrawn.

He further submits that the exchange was in violation of rule 5 of Punjab Village Common Land (Regulation) Act, 1961. No valuation of the property had been done, preceding to the passing of resolution and exchange. The exchange is outcome of mala fide and is an act of favour by the Gram Panchayat, therefore, the finding rendered by the lower appellate court being finding of fact and law and should not be interfered with by exercising power under Section 100 CPC and the civil court, in view of the ratio decidendi culled out in the judgment in **Satbir Singh and another Vs. Dhani Ram and others, 1985 PLJ 426** has jurisdiction to try the suit.

I have heard learned counsel for the parties and appraised the paper book with their able assistance.

The respondents-plaintiffs, in cross examination to a specific question, admitted that Chander Bhan fixed the value of the property as 8 Annas whereas the value of property given by the appellants-defendants in exchange was 8 Annas (more) than that of the Gram Panchayat. In essence, the value of the land owned by the appellants-defendants was 16 Annas and that of the Gram Panchayat was 8 Annas.

In view of such admission on the part respondents-plaintiffs the argument that there was no adherence to Rule 5 of the Act, much less no exercise had been done for the valuation, falls flat, thus not tenable.

Vide Ex.D-1 the Commissioner and Secretary to Government, Haryana gave a approval to the resolution dated 20.5.1983 whereby the shamlat land belonging to Gram Panchayat measuring 40 Kanals 4 Marlas out of Khasra No.84/23/24/25, 19/1, 98/5, 99/10/1 exchanged with the land measuring 20 Kanals and 2 Marlas out of khasra No. 75/9-Min west, 10/12, 19/1 owned by appellant-defendants-Chander Bhan.

In the suit a resolution dated 20.5.1983 has been challenged. The plaintiff has not sought declaration of the approval Ex.D-1. It would be apt to refer to the prayer clause. The same is extracted hereinafter:-

“That the plaintiffs, therefore, pray that a decree for declaration to the effect that the proposed exchange of the land as embodied in resolution No.1 dated 20.5.83 is illegal and void and detrimental to the interests of the inhabitants of the village and not binding upon the plaintiffs and upon the residents of the village be kindly passed in favour of the plaintiff, against the defendants and in consequence of the said decree all the three defendants be kindly restrained to implement the above said resolution and to finalize the exchange. In case the exchange is found to have been finalized, defendant Nos. 1 and 2 be kindly restrained from taking possession of the land of the

Gram Panchayat as mentioned in para no.1 of the plaint with costs of the suit. Any other relief suitable with the Hon'ble Court be also kindly awarded to the plaintiffs.”

Even otherwise, from the perusal of Ex.P-8 Jamabandi reflects that the property sought to be given in exchange, was owned by Gram Panchayat and the Assistant Collector had effected the mutation on 16.4.1984. Even in Ex.D-4 , copy of khasra girdawari, there is a note that the land had been exchanged.

In view of the above, am of the view that given procedure under law and statute had been followed for the purpose of effecting exchange. Since the valuation of the land given by the appellants-defendants was more than the one taken in exchange, no prejudice has been caused to the respondents-plaintiffs in filing suit. The aforementioned documents, have not been noticed by the lower appellate court, while reversing the finding of the trial court whereby the suit of the respondents-plaintiffs was dismissed.

It is now a settled law that in case alternative remedy is provided, the grievance of the party can be redressed except, only, where the order has been passed without jurisdiction i.e. by referring to provisions of Section 9 CPC. However, in the instant case, since there has been compliance of provisions of rule 5 of the Act, therefore, it cannot be said that the order under rule 5, of the Act has been passed without jurisdiction. Thus, in my view, the remedy if any, for the plaintiff lied else where.

Keeping in view the facts and circumstances of the case the substantial question of law, as noticed above, is thus answered in favour of the appellants-defendants and against the respondents-plaintiffs.

The judgment and decree of the appellate court is hereby reversed and that of the trial court is restored.

The appeal is allowed. CM No. 10127-C of 2015 is dismissed as not pressed.

There shall be no order as to costs.

(AMIT RAWAL)
JUDGE

August 26, 2015
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