

ESA No.56 of 2014 (O&M)

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ESA No.56 of 2014 (O&M)
Date of decision:12.01.2015**

Gram Panchayat Hassanpur

...Petitioner

Versus

Jagdish Chand and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Adarsh Jain, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

CM Nos.14350 & 13994-C of 2014

Application is allowed, as prayed for.

ESA No.56 of 2014 (O&M)

The present appeal has been filed by the objector against the orders of both the Courts below.

In brief, the plaintiff-respondent no.1 had filed suit for possession and injunction by alleging that his father Ghuray Mal purchased a piece of land, which was part of the *shamilat deh*, from one Abdul Hakim for a sale consideration of ₹40/- vide registered sale deed dated 15.03.1944. The said plot was allegedly used by the plaintiff as Gait and Nohra and, thereafter, a Mill was constructed upon it. The defendants Narotam Dass and Bhadar Sain forcibly took possession of the adjoining land and illegally initiated proceedings under Section 145 of the Code of Criminal Procedure,

1973 (here-in-after referred to as the “Cr.P.C.”) and took possession of a portion of the land in dispute shown with letters ABCD in the site plan. The attachment was ultimately released by the Sub Divisional Magistrate in favour of Narotam Dass and Bhadar Sain on 06.06.1969. It is alleged that in the plaint, Jagdish Chand had stated that neither the Gram Panchayat Hassanpur nor the Notified Area Committee (NAC) has any concern with the land in dispute, however, the NAC, Hassanpur through Sub Divisional Officer (Civil), Palwal as its Administrator was impleaded as defendant no.3 in the suit. However, the NAC, Hassanpur was given up on 28.10.1976 after it had filed its written statement dated 14.01.1974 in which it had opposed the suit of the plaintiff and denied that Abdul Hakim was the owner of the suit land and had any right to sell the land in dispute rather it was alleged that the disputed land is owned and possessed by the NAC and the sale in favour of Ghuray Mal, father of the plaintiff, was denied. It was also alleged that the NAC Hassanpur was established in succession to the Gram Panchayat.

Counsel for the petitioner has alleged that the suit was filed by the plaintiff in collusion with Narotam Dass and Bhadar Sain and got a decree dated 20.09.1978. When the decree was sought to be executed, objection was filed by the Gram Panchayat, *inter alia*, on the ground that it is the owner of the property in dispute and the decree has been obtained in their absence when they were given up. The Executing Court framed as many as 6 issues including issue no.2 which was framed to the effect that as to whether the Gram Panchayat was the owner of the suit land, if so, to what

ESA No.56 of 2014 (O&M)

[3]

effect. After considering the respective evidence of the parties, the Executing Court dismissed the objection vide order dated 28.08.2008 and the appeal filed against that order was also dismissed on 16.07.2014.

Counsel for the petitioner has vehemently argued that the Gram Panchayat is the owner of the property in dispute and has referred to various orders passed by this Court in earlier revisions. However, he could not dislodge the finding of the Courts below wherein it has been held that the suit land was sold in the year 1944 by a co-sharer which was not beyond his share and was exempted from the operation of the Punjab Village Common Lands (Regulation) Act, 1961 in view of Sections 2(e) and 2(g) in which it has been provided that the *shamilat deh* land sold by a co-sharer before 26.01.1950 will not be included in the *shamilat deh* and the Punjab Gram Panchayat Act, 1952 has no retrospective effect to set at naught the sale deed by a proprietor much before its operation.

In view of the aforesaid discussion, I do not find any error in the orders of the Courts below to take a different view from them to interfere in this appeal.

Dismissed.

January 12, 2015
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Rakesh Kumar Jain
Judge