

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.5372 of 2012 (O&M)

.....

Date of decision:15.7.2015

Bhagwan Sahai and others

.....Appellants

v.

Gram Panchayat of Village Atwa and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Gaurav Singla, Advocate for the appellants.

.....

Inderjit Singh, J.

This regular second appeal has been filed by Bhagwan Sahai, Babu Lal and Smt. Atro-appellants/plaintiffs against Gram Panchayat of Village Atwa, Block Development and Panchayat Officer and the Director, Panchayat, Haryana-respondents/defendants challenging the impugned judgment and decree dated 31.8.2012 passed by the learned Additional District Judge, Palwal, vide which the appeal filed by the appellants-plaintiffs against the impugned judgment and decree dated 29.3.2010 passed by Civil Judge (Junior Division), Palwal, dismissing the suit of the plaintiffs, has been dismissed.

The brief facts of the case are that Gulab Singh (since deceased) filed the suit against Gram Panchayat of village Atwa, Block Development and Panchayat Officer and the Director Panchayat, Haryana.

During the pendency of the suit, he died and his LR's were impleaded as plaintiffs. The plaintiff filed the suit for declaration and mandatory injunction for declaring the land measuring 4 Marlas being owned and possessed by him and the defendants have no concern with the same and a decree for mandatory injunction directing the defendants to execute the sale deed of the land in dispute as per the directions of Assistant Collector Ist Grade, Palwal vide order dated 25.3.1996.

It is the case of the plaintiffs that defendant No.1 filed a petition under Section 7 of the Punjab Village Common Lands (Regulations) Act, 1961 (hereinafter referred to as 'the Act') in respect of the land detailed in para 2 of the plaint to the extent of 4 Marlas only. The said petition was decided by Assistant Collector Ist Grade, Palwal, on 25.3.1996 and he recorded the finding that the plaintiffs had made an encroachment upon 4 Marlas of land, which is owned by Gram Panchayat/defendant No.1. However, it was also held by him that since the construction raised by the plaintiff over 4 Marlas of land was more than 25 years old, therefore, defendant No.1-Gram Panchayat was directed to transfer the ownership of 4 Marlas of land to the plaintiff after receiving a compensation of ₹4,092/- with defendant No.1. However, defendants No.1 and 2 failed to seek the permission of defendant No.3, as per order dated 25.3.1996, and did not execute the sale deed.

Upon notice, the defendants appeared through the Legal Officer and contested the claim of the plaintiffs and took the plea that the order dated 25.3.1996 passed by the Assistant Collector Ist Grade, Palwal, was not

legal in the eyes of law. He has no jurisdiction to pass this order. He has no power under Section 7 of the Act to pass such directions for the Gram Panchayat to transfer the land which is owned by it. It is the case of defendant No.1 that Assistant Collector Ist Grade, Palwal, had no power/authority to assess the value of the land owned by the Gram Panchayat and giving further direction to the defendants to execute the sale deed.

After framing the issues and the parties led the evidence, the learned Civil Judge (Junior Division), Palwal, dismissed the suit. Aggrieved from the judgment and decree of the learned Civil Judge (Junior Division), the plaintiffs filed an appeal before the District Judge, Palwal, which was also dismissed by the learned Additional District Judge, Palwal, vide judgment and decree dated 31.8.2012. Aggrieved from these judgments and decrees of the Courts below, the present regular second appeal has been filed.

At the time of arguments, learned counsel for the appellants argued that defendant No.1 was directed to transfer the ownership of 4 Marlas of land to the plaintiffs in terms of the order dated 25.3.1996 passed by the Assistant Collector Ist Grade, Palwal. He argued that the findings given by the Courts below are not as per evidence and law and, therefore, the same should be set aside.

After hearing learned counsel for the appellants and going through the record, I find that the plaintiffs have filed the suit for declaration declaring him owner in possession of the suit land and for

mandatory injunction on the basis of the order passed by Assistant Collector Ist Grade, Palwal, under Section 7 of the Act on the petition filed by the Gram Panchayat. It is admitted case of the plaintiffs that no sale deed had been executed in terms of the order passed by the Assistant Collector Ist Grade, Palwal. When no such sale deed had been executed, the plaintiffs cannot be declared as owner in possession over the suit land. Secondly, at the time of arguments, the counsel for the appellants failed to show this Court any power or jurisdiction with the Assistant Collector Ist Grade, Palwal, to give the direction to the Gram Panchayat to transfer its land in favour of the plaintiffs. The order passed by the Assistant Collector Ist Grade, Palwal, is null and void and beyond jurisdiction. There is no question of implementing this order passed by the Assistant Collector Ist Grade, Palwal. Again, there is nothing on the record that Assistant Collector Ist Grade, Palwal, in the proceedings under Section 7 of the Act, in any way, was authorized to assess the value of the land owned by the Gram Panchayat. He has no power to pass such type of order. Otherwise also, the proceedings are filed under Section 7 of the Act by the Gram Panchayat and the order has been passed giving relief to the plaintiffs. Even as per this order, which has been relied upon by the plaintiffs, the plaintiffs have been held in unauthorized possession of the land of the Gram Panchayat.

Therefore, in view of the evidence produced before the Courts below and as per the above discussion, I find that the findings given by the Courts below are correct and as per evidence and law which do not require any interference from this Court and the same are upheld. Neither any

substantial question of law arises in this regular second appeal nor these findings are perverse or the evidence has not been read in right perspective.

Therefore, finding no merit in the regular second appeal, the same is dismissed.

July 15, 2015.

(Inderjit Singh)
Judge

hsp