

R.S.A. NO.1570 OF 2015 (O&M)

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

C.M. NOS.4365 TO 4367 C OF 2015 &

R.S.A. NO.1570 OF 2015

DATE OF DECISION: OCTOBER 30, 2015

Gram Panchayat, Village Apra, District Jalandhar

.....Appellant

VERSUS

Bharat Sanchar Nigam Limited, Jalandhar and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

**Present: Ms. Sushma Chopra, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.4365 C of 2015

Prayer in this application is for condonation of delay of 14 days
in filing the appeal.

For the reasons mentioned in the application, which are duly
supported by an affidavit of Sarpanch of Gram Panchayat, Village Apra, the
present application is allowed and delay of 14 days in filing the appeal
stands condoned.

C.M. No.4366 C of 2015

Application is allowed.

Exemption is granted from filing certified as well as true typed copies of the documents.

C.M. No.4367 C of 2015 & R.S.A. No.1570 of 2015

Challenge in this appeal is to the judgement and decree passed by the District Judge, Jalandhar, dated 06.01.2015, by which the appeal preferred by the contesting respondent-plaintiff, Bharat Sanchar Nigam Limited, was allowed against the judgement and decree dated 12.02.2013 passed by the Additional Civil Judge (Senior Division), Phillaur, dismissing the suit for symbolic possession by way of specific performance directing appellant-defendant No.4 and the Sub Registrar, Phillaur, respondent No.3 to register the transfer of ownership deed/sale deed presented by the Gram Panchayat on 07.09.2006 qua the land measuring 4K-0M, Khata No.839/1019, situated in the revenue estate of Village Apra, Tehsil Phillaur, District Jalandhar, of which possession has already been given since 23.12.1992, on which a telephone exchange has already been constructed and is operational, was dismissed.

It is the contention of learned counsel for the appellant that resolution dated 01.07.2006, Ex.PW5/1 passed by appellant-Gram Panchayat is not valid as the requirement under the Gram Panchayat Act is 3/4th majority whereas in the resolution only six Panches alongwith the Sarpanch have signed the same. Counsel further contends that it has come in the statement of Vipin Kumar, DW2, that he was not a Panch on 01.07.2006, the date on which the resolution was passed and if his name is deleted, then the majority required would not be completed and, thus, it

would not be a valid resolution. She, on this basis, contends that the very resolution being not legal, cannot be enforced and accordingly the finding recorded by the Court below that indeed there were signatures of seven Panches alongwith Sarpanch is not sustainable.

Counsel for the appellant further contends that the alleged transfer deed/sale deed dated 07.09.2006 is only a draft and not a sale deed as the same has not been prepared on a stamp paper. She, however, does not dispute the fact that no stamp duty is to be paid on the transfer/sale as qua that exemption is granted from the stamp duty.

Further contention of counsel for the appellant is that the consideration amount has not been paid and, therefore, the alleged draft transfer deed/sale deed cannot be said to be a valid piece of document on the basis of which the decree for specific performance of transfer deed/sale deed can be passed. Accordingly, prayer has been made to set-aside the impugned judgement and decree dated 06.01.2015 passed by the District Judge, Jalandhar,

I have considered the submissions made by learned counsel for the appellant and with her able assistance have gone through the records of the case.

A perusal of the impugned judgement would show that the certified copy of the resolution dated 01.07.2006, which has been brought on record as Ex.PW5/2, depicts that apart from Sarpanch, there were seven other Panches who had signed the said resolution. As per this resolution, Gram Panchayat had agreed for the transfer of the land in question, possession of which was admittedly handed over to the contesting respondent-plaintiff in the year 1992. It is also not in dispute that the

Telephone Exchange was constructed thereon and is operational. The memo dated 12.11.1991 issued by the Government of Punjab, Department of Rural Development and Panchayats, Chandigarh, which deals with the subject of transfer/sale of land to the Tele-communication Department has been duly proved, indicating that the said Department had accorded sanction for transfer of the land at the market rate in favour of the Government of India. Counsel could not dispute that in the alleged draft sale deed, the consideration amount mentioned is ₹ four lacs, which was market rate at the relevant time. This clearly establishes that indeed all the legal formalities, which were mandated and required, have been duly completed and the sale deed/transfer deed dated 07.09.2006 was duly drafted. The witnesses appearing for the Gram Panchayat have gone to the extent of stating that Sarpanch and Panch had gone to the office of the Sub Registrar for execution of the sale deed/transfer deed but did not present themselves before the Sub Registrar.

So far as stand of counsel regarding statement of Vipin Kumar, DW2 that he was not the Panch on 01.07.2006, the same cannot be accepted in the light of the fact that the resolution, which has been brought on record, is a certified copy of resolution duly attested by the Panchayat Secretary and the Sarpanch of the Village at the relevant time, which clearly establishes that he was the Panch of the Gram Panchayat, which factum has also been discussed in detail and finds mentioned in Para 17 of the judgement of learned District Judge, Jalandhar. The Court has, therefore, dealt with this aspect as well and rightly come to the conclusion that the resolution was validly passed.

As regards the contention of counsel for the appellant that the

sale deed/transfer deed is not on stamp paper and, therefore, would not be a valid piece of document, suffice it to say that since exemption from payment of stamp duty is there and, thus, the same was not required to be on the stamp paper. The sale deed/transfer deed dated 07.09.2006 stood proved to have been duly executed, especially when the scribe and other witnesses have come forth and made statements in support of the same.

So far as contention of learned counsel for the appellant that the consideration amount has not been paid and, therefore, the sale deed/transfer deed cannot be ordered to be specifically executed, it is relevant to mention here that the amount was to be paid at the time of registration of sale deed/transfer deed and as per the evidence brought on record, although the Sarpanch and Panch were present in the office of Sub Registrar but they did not come forth to execute the same and, therefore, it cannot be said that no sale consideration was to pass at the time when the sale deed/transfer deed was to be registered. It is not the stand of the appellant-defendant Gram Panchayat that the amount of ₹ four lacs, which was the sale consideration, was never offered to them or the Sarpanch and the Panches have refused to execute the sale deed/transfer deed because of non-payment of the sale consideration amount. It would not be out of way to mention here that the learned lower Appellate Court has properly taken care of the aspect with regard to the payment of sale consideration by ordering that ₹four lacs through Bank Draft or through cheque to the Gram Panchayat and if it is refused/not accepted to deposit the same with the trial Court within three months and, therefore, this grouse of counsel for the appellant also cannot sustain.

The Lower Appellate Court has returned findings after properly

appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same. No substantial question of law is involved in the present appeal.

Therefore, finding no merit in the present appeal, the same stands dismissed.

Since the main appeal stands dismissed, C.M. No.4367 C of 2015 for staying the operation and implementation of the impugned judgement and decree is also dismissed.

**October 30, 2015
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**(AUGUSTINE GEORGE MASIH)
JUDGE**