

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

RSA No.2299 of 2015 (O&M)

Date of Decision: 22.09.2015.

Shanker Singh

....Appellant.

VERSUS

Gram Panchayat Village Mohkam Arian and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. S.K. Arora, Advocate for the appellant.

SNEH PRASHAR, J.

CM-5971-72-C-2015

In view of the grounds mentioned in the applications, delay of 14 days in refiling and 40 days in filing the present appeal is condoned.

RSA-2299-2015 (O&M)

This Regular Second Appeal had been preferred against the judgment and decree dated 07.11.2014 passed by Additional District Judge-III, Ferozepur, vide which the judgment and decree dated 10.08.2007 passed by Civil Judge (Junior Division), Ferozepur in Civil Suit No.742-1 of 24.04.2001/21.12.2004, was set aside and the case was sent back to

learned trial Court allowing the appellant and respondents No.2 to 11 (hereinafter referred to as the “plaintiffs”) to file fresh legible plaint supported by legible copy of pleadings and documents a direction was given to learned trial Court to proceed from the stage of filing of written statement by respondent No.1-defendants in the suit and pass a fresh judgment after giving due opportunity to the parties to prosecute their case.

The facts, in brief, as they emerge from the record are that plaintiffs filed a suit for declaration claiming to be co-owners/co-sharers in the suit land (detail of which was given in the pleadings) situated at village Mohkam Arian, Tehsil Fazilka on the ground that they had purchased the said land from various co-sharers (details of the sale deeds in their favour were mentioned). They further alleged that defendants No.1 and 2 (Gram Panchayat village Mohkam Arian-appellant and the Deputy Commissioner, Ferozepur) had subsequently started claiming that they are owners in possession of the suit land although they have no concern whatsoever with the same.

It was alleged that on the basis of letter No.4527-151 dated 28.07.1995 issued by defendant No.2, mutation No.2985 had been sanctioned in favour of the Gram Panchayat. The said letter and mutation were assailed as illegal, null and void, creating no title in favour of the Gram Panchayat. Further, pleading that possession of the suit land had been forcibly taken from them and that the defendants were threatening to alienate the suit land, a prayer for declaration of their title was made by the plaintiffs. Relief of possession of the suit land as well as for mesne profits

was sought and as a consequential relief an injunctive order restraining the defendants from alienating the suit land was also prayed for.

The record of learned trial Court indicates that on notice, respondent No.1-Gram Panchayat (appellant) appeared through an Advocate. Deputy Commissioner, Ferozepur - defendant No.2(respondent No.12) did not appear despite service and was proceeded against exparte on 26.07.2001. When despite having availed numerous opportunities no written statement was filed on behalf of defendant No.1-Gram Panchayat, its defence was struck off.

Plaintiffs adduced ocular and documentary evidence. Appellant Shanker Singh (plaintiff No.1) appeared as PW1. During his statement, he produced copies of sale deeds Ex.P1 to P18. Copies of impugned letter issued by defendant No.2 and mutation No.2985 were tendered as Ex.P19 and Ex.P20. The other witness examined was PW2 Arjun Singh, who stated that the suit land is '*Chahi Nehri*' and yields two crops i.e. wheat and rice and can give an income of Rs.15,000/- per acre per year. He added that the defendant-Gram Panchayat is in possession of the suit land for the last about six years. During pendency of the suit, plaintiffs through their counsel got their claim regarding mesne profits dismissed as withdrawn.

Considering the evidence led by the plaintiffs and the submissions made on their behalf, learned trial Court decreed their suit with costs vide judgment and decree dated 10.08.2007.

The Gram Panchayat-defendant No.1 (respondent No.1) preferred an appeal alleging that the judgment and decree dated 10.08.2007

had been obtained by playing fraud as none of the defendants received proper notice/intimation of the suit filed by the plaintiffs.

Accepting the submissions made on behalf of the appellant-respondent, learned Additional District Judge set aside the judgment and decree passed by the trial Court being not sustainable and remitted the case back to the trial Court for proceeding from the stage of filing written statement and deciding the case afresh. Impugning the said judgment dated 07.11.2014, the instant appeal has been preferred.

The submissions made by Mr. S.K. Arora, learned counsel representing the appellant have been considered.

It was asserted by respondent No.1-Gram Panchayat before the first appellate Court that the impugned decree was obtained by fraud as no proper notice was served upon either on the Gram Panchayat or on Deputy Commissioner, Ferozepur. The Advocate, who appeared on behalf of the Gram Panchayat, was suitably arranged to appear in order to complete the paper formalities. In fact, none of the defendants had proper intimation to enable them to file a written statement to contest the claim of the plaintiffs. It was also contended that an order of ejectment had already been passed against the illegal occupants of the suit land of which the village Gram Panchayat is the owner . The said material facts were concealed because of collusion between the parties and the Sarpanch of the Gram Panchayat at the relevant time.

The findings of learned appellate Court recorded in Para No.13 and 14 of the judgment are as under:-

“The reference is made to the copy of the order of the Honorable High Court in RSA no. 86 of 2007 titled Shanker Singh versus Gram Panchayat and another, wherein also the fraud played with the land of Gram Panchayat by Shanker Singh joining hands with the plaintiffs has been surfaced and ultimately, it was observed that the decree obtained by fraud vitiates the proceedings. The copy of order dated 27.8.2004 passed under Sections 4,5 and 7 of the Punjab Public Premises and Land Eviction and Rent Recovery Act, 1973 against Shankar Singh are produced on the record which reflect that the aforesaid judgment and decree has been obtained in collusion with the previous Sarpanch of the Gram Panchayat-defendant no.1 and there had not been any proper notice to the Gram Panchayat of Village Mohkam Araian and to the Learned Deputy Commissioner Ferozepur.

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Keeping in view the peculiar facts of this case and that the land of Gram Panchayat is involved wherein, the eviction proceedings were already in progress against the occupants of the suit land, the judgment and decree passed by the learned Trial Court is legally not sustainable and therefore, the same are set aside. The most of the documents including the plaint are also found not adequately legible.

From the aforesaid findings of learned first appellate Court, it is apparent that not only material and vital facts were concealed even the documents including the pleadings of the plaintiffs were found not adequately legible. It has been held by Hon'ble Supreme Court in Krishna Hare Gaur vs. Vinod Kumar Tyagi and Ors., A.I.R. 2015 SC 1248 that even

in judicial proceedings once a fraud is proved, all advantages gained by playing fraud can be taken away. In such an eventuality the question of non-executing of the statutory remedies or statutory bars like doctrine of res judicata are not attracted. Suppression of any material fact/document amounts to a fraud on the court. Every court has an inherent power to recall its own order obtained by fraud as the order so obtained is non est.

The facts discussed above leave no ground for intervention in the judgment dated 07.11.2014 passed by first appellate Court vide which the case had been sent back to learned trial Court to proceed from the stage of filing the written statement and to decide the same afresh. The plaintiffs had also been given liberty to file a fresh legible plaint supported by legible copy of pleadings and documents.

Thus, finding no illegality or perversity in the judgment dated 07.11.2014 of learned first appellate Court and the appeal being devoid of merit is hereby dismissed.

(SNEH PRASHAR)
JUDGE

22.09.2015
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