

RSA No. 5056 of 2015 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 5056 of 2015 (O&M)

Date of Decision: September 28, 2015

Gram Panchayat Dera Mir Miran

...Appellant

Versus

Darshan Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Manish Joshi, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (Oral):

CM No.12090-C of 2015

Prayer in this application is for condonation of delay of 61 days in filing the appeal.

For the reasons mentioned in the application which is duly supported by the affidavit, the same is allowed. Delay of 61 days in filing the appeal stands condoned.

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Challenge in this appeal is to the judgments and decree passed by the Courts below vide which the suit for declaration to the effect that the plaintiff is the owner in possession of residential house marked in the site plan (Annexure P-1) attached with the plaint comprising in *abadi deh* of village Dera Meer Meeran, Tehsil and District Fatehgarh Sahib, as per the jamabandi for the year 2000-01

and for declaring the order dated 21.02.2006 passed by the Collector/ADC (D), Fatehgarh Sahib, i.e. in petition dated 03.05.2005 under Section 11 of the Punjab Village Common Lands (Regulations) Act, 1961 (For short 'the 1961 Act'), titled as 'Gram Panchayat Vs. Ram Sarup', is illegal, null and void and suit for permanent injunction, stands decreed by the Additional Civil Judge (Senior Division), Fatehgarh Sahib, on 29.01.2014 and the appeal preferred by the Gram Panchayat against the same stands dismissed by the Additional District Judge, Fatehgarh Sahib, on 26.03.2015.

2. It is the contention of the learned counsel for the appellant that the suit is not maintainable as has been filed by the respondent-plaintiff in the light of Section 13 of the 1961 Act as the jurisdiction of the Civil Court is specifically barred. It is, therefore, contended that the judgments and decree passed by the Courts below cannot sustain.

3. This contention of the learned counsel for the appellant cannot be accepted in the light of the fact that the jurisdiction of Civil Court is not barred where the order passed by the authorities under the 1961 Act is challenged on the basis of jurisdiction itself.

4. In the present case, a petition under Section 11 of the 1961 Act was preferred by the Gram Panchayat (appellant-defendant) against Ram Sarup, the father of the respondent-plaintiff, who was allotted the land in question being a land-less and poor person. It was asserted that he was required to build the house

within some specified time and to stay therein, which provision has been violated. It would not be out of way to mention here that prior to filing of the petition under Section 11 of the 1961 Act on 03.05.2005, Ram Sarup had died on 12.09.1992 as the death certificate has been brought on record as Ex.P-3. The petition, therefore, which was proceeded *ex parte* on the ground that Ram Sarup was evading service which resulted in passing of the order dated 21.02.2006 cannot be sustained. Even an application for setting aside of the *ex parte* proceedings was dismissed vide order dated 01.03.2007 (Ex.P-4) without assigning any valid reason. In the pleadings before the trial Court, the resolution dated 28.05.1973 of the Gram Panchayat, as per which the condition was imposed, has not been brought on record nor specifically pleaded and proved. Since the said resolution has not been brought on record, the terms and conditions of the resolution which are alleged to have been violated are unclear which would indicate that the order passed by the authorities under the 1961 Act is not justified. It is not in dispute that as of now and at the time of filing of the suit, residential house was in existence where Darshan Lal, who is the son of Ram Sarup, is residing on the area which was allotted to his father. There is no illegality committed by the Courts below in entertaining the present suit and decided the same on merits.

5. Both the Courts below have returned concurrent findings which are based on proper appreciation of the evidence brought on

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record which do not call for any interference by this Court as there is no misreading or non-consideration of evidence nor is there any perversity or illegality in the same.

6. No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

CM No.12091-C of 2015

In view of the order passed in the main appeal, the present application also stands dismissed.

September 28, 2015
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE