

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

Regular Second Appeal No.960 of 1988(O&M)

Date of Decision: April 11, 2016

Shadi Lal and others

.....APPELLANTS.

VERSUS

Gram Panchayat of Village Mehngarwal and another

.....RESPONDENTS.

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sarwan Singh, Senior Advocate
with Mr. N.S. Rapri, Advocate
for the appellants.

Mr. B.S. Jaswal, Advocate
for respondent No.1.

Ms. Neha Jain, Advocate for
Mr. K.S. Dadwal, Advocate
for respondent No.2.

SURINDER GUPTA, J.

Heard.

The plaintiffs-appellants filed suit seeking the relief of permanent injunction, restraining defendant no.1-Gram Panchayat of Village Mehngarwal from passing any resolution or helping defendant no.2-Tara Chand, Thekedar (contractor) in getting permission from the Forest Department to remove the *khair* trees from the jungle, situated in the area of Gram Panchayat.

The suit filed by the plaintiffs was dismissed and the appeal

filed by them was also dismissed.

The case of the plaintiffs, in brief, is that Gram Panchayat auctioned *khair* trees in its forest area and they had deposited ₹3,000/- with the Gram Panchayat. As per rules, the contractor had to take permission from the Forest Department for getting the trees. A resolution was passed in favour of plaintiffs by the Gram Panchayat in the year 1976 and was sent to the Forest Department for necessary sanction. However, the District Forest Officer after considering the matter, reported that the year 1976-77 was not felling season of Hoshiarpur block, as such, necessary permission was not granted. Thereafter, the Gram Panchayat re-auctioned the same *khair* trees in the open auction to defendant No.2.

Gram Panchyat, in its reply, denied that *khair* trees were auctioned to the plaintiffs, rather, only bigger roots (*Mundies*) were auctioned to the plaintiff in the auction at the rate ₹22/- and ₹20.50 paise per Mundi respectively and they deposited ₹3,000/- with the Gram Panchayat as earnest money. The auction was cancelled as they failed to get the required licence from the Forest Department. Regarding the amount of ₹3,000/- deposited by plaintiffs as earnest money, a plea was taken by Gram Panchayat that this amount after the death of Ram Parshad (plaintiff), was paid to Jai Dev.

Learned counsel for the appellants has confined his relief in this appeal only for the return of earnest money. He has argued that the Gram Panchayat has not proved that amount of ₹3,000/- was repaid and no documentary evidence was produced in this regard and secondly Jai Dev is the legal heir of Ram Parshad.

On perusal of lower Courts record, I find that contract of plaintiff-appellant had not matured as they could not get the required permission from the Forest Department to uproot the trees or the bigger roots (*mundies*) of the trees. However, so far as return of ₹3,000/- deposited by appellants is concerned, this fact is admitted by the Gram Panchayat that on the contract not maturing, plaintiffs are entitled for refund of the same. The defendant i.e. Gram Panchayat did not produce any evidence on record to prove that this amount was refunded to plaintiffs-appellants or any of the legal heir of Ram Parshad.

In view facts discussed above, a substantial question of law arises for consideration as to whether while declining the relief of injunction, the plaintiffs can be allowed the relief of refund of earnest money, deposited by them.

Though the suit filed by the plaintiffs is not for the recovery of earnest money, but the matter in issue is the public auction in their favour, under which they had deposited ₹3,000/- as earnest money. This fact is admitted by the Gram Panchayat that earnest money was deposited vide receipts Ex.P1 and Ex.P2. In the event of the plaintiffs getting no relief based on the resolution of the Gram Panchayat on technical grounds, they are entitled for refund of the earnest money, which as per the plea taken by the Gram Panchayat was refunded, but Gram Panchayat has failed to prove the same.

In view of this, the earnest money as deposited by the appellants, is ordered to be refunded to them, subject to their paying the requisite court fees, at the time of filing the execution. They will pay the

court fees as was required to be paid before the trial court, first Appellate Court and in this appeal. The amount of ₹3,000/- be returned to the appellants-plaintiffs with interest @ 6% per annum from the date of deposit, till the payment of amount.

With the above modification in the judgements of Courts below, the appeal is partly allowed to above extent. In view of facts and circumstances of the case, parties to bear their own costs.

April 11, 2016
deepak/jv

(SURINDER GUPTA)
JUDGE