

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

**RSA No.3119 of 2009 (O&M)
Date of decision: July 26, 2016**

Sarswati Devi and others

... Appellants

versus

Haryana State and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. C.B.Goel, Advocate,
for the appellants.

Mr. Raman Garg, Advocate,
for the applicant.

AMOL RATTAN SINGH, J.

CM No.13811-C of 2009

This is an application under Order 1 Rule 10 CPC, filed by the Municipal Committee, Loharu, seeking to be impleaded as a respondent in the present appeal, on the ground that the area in which the suit land is included, earlier was in the ownership of the (former) Gram Panchayat and now is within the area of the Municipality. It has further been stated that an application in that regard had earlier been moved before the Additional Civil Judge (Senior Division), Loharu, on 19.05.2009, to whom the case was remanded by the learned first Appellate Court, vide its judgment and decree dated 14.03.2009, i.e. the judgment and decree now under challenge in this second appeal.

However, due to the interim order passed in this appeal by this Court, staying the operation of the judgment of the lower Appellate Court, that application could never be decided and therefore, the present application has been moved before this Court.

A reply to the said application was filed by the appellants, upon notice being issued to the counsel for the appellants as also for the State of Haryana, in which it is stated that though the Municipal Committee is claiming to have become the owner of the suit land, no notification in that regard has been appended with the application and there is no material whatsoever, to show that the suit land was ever owned by either a Gram Panchayat or was subsequently included within the municipal area. In fact, it is further stated, it was the State of Haryana that was the owner of the suit property, which has now been partitioned by the judgment and decree of the learned Civil Judge, (though reversed by the lower Appellate Court, but not on the ground that the land belongs to the Municipality, as the Municipality, in fact, was not impleaded even before the lower Appellate Court, as a party).

Hence, dismissal of the application has been prayed for in the reply filed by the appellants.

As noticed in the earlier order of this Court dated 02.03.2016, the main appeal itself had been pronounced as 'allowed' in Court on that date, but upon the judgment being put up to this Court for signatures, it was noticed from the case file, that this application seeking impleadment of the Municipal Committee had not been either argued or dealt with, nor had it, in fact, been ever referred to, either by the counsel for the appellants, or the State counsel, (possibly due to inadvertence). Accordingly, the appeal had been put up for re-hearing vide an order of the same date and counsel for the applicant

Municipal Committee informed to address arguments on the issue.

Mr. Raman Garg, learned counsel for the applicant Committee, had first appeared thereafter on 18.05.2015 and had stated that since he is no longer on the panel of lawyers of the Committee, he would seek instructions as to whether he is to continue to pursue the application, or the Committee would like to engage a new counsel.

While recording the aforesaid statement of Mr. Garg, this Court had also directed the Director, Urban Local Bodies, Haryana, through learned counsel who had represented the State on that date, to ensure that the Municipal Committee is represented in its application, by a counsel, on the next date of hearing.

The matter had thereafter been adjourned twice, without it being argued, to 11.07.2016, on which date it was directed that Mr. Raman Garg be informed of the next date of hearing, i.e. 19.07.2016.

Eventually, the matter came up for final hearing today.

Mr. Raman Garg, learned counsel for the applicant, has today again appeared and submitted that despite his best efforts and his having written to the Secretary, Municipal Committee, Loharu, to provide him information to show the ownership of the municipality over the property in dispute, the municipality has not responded in any manner whatsoever. He has also produced a copy of the letter written by him on 19.05.2016, referring to his earlier letters dated 05.12.2013 and 17.12.2013. He has further also produced a letter from the Director, Urban Local Bodies, Haryana, Panchkula, addressed to the Secretary, Municipal Committee, Loharu, on 27.05.2016, directing him to assist Mr. Garg in the matter, but despite that, nobody is coming to assist learned counsel.

The aforesaid letters addressed by Mr. Raman Garg and by the Director Urban Local Bodies, Haryana, Panchkula, to the Secretary, Municipal Committee, Loharu, are taken on record as Marks A & B respectively.

In view of the above, it is obvious that the applicant Municipal Committee is no longer interested in pursuing this application for impleadment as a party in the present appeal. Consequently, the application is dismissed as not pressed.

Since the matter had been put up for re-hearing despite it having been allowed by pronouncement in open Court on 02.03.2016, but with that the order not having been signed when the pendency of this application was noticed, the original order allowing the appeal stands reiterated, with the judgment as follows.

RSA No.3119 of 2009

The suit out of which this 2nd appeal arises, was filed by the predecessors-in-interest of the appellants, seeking possession of the suit property by way of partition. The suit property, consisting of 23 kanals 16 marlas of land, is stated to have been situated in the revenue estate of Village Akbarpur, Tehsil Loharu, District Bhiwani, in which the predecessors-in-interest of the appellants had a 52-1/2 /743 share, respondent No.1, along with respondents No.2 to 7 who had a 603/743 share and respondents No.8 to 12 had a 35/743 share.

2. By a preliminary decree dated 21.2.2004, the learned Additional Civil Judge (Senior Division), Loharu, held the predecessors-in-interest of appellants-plaintiffs, along with respondents No.8 to 12, to be entitled to 1 kanal-13 marlas of land, respondent No.1-State to be entitled to 19 kanals-16

marlas of land, respondents No.2 to 6 to be entitled to 1 kanal-3 marlas and respondent No.7 to be entitled to 1 kanal-13 marlas of land. That preliminary decree was never challenged. Thereafter, on 20.7.2005, the final decree was passed for possession by way of the partition already ordered in the preliminary decree, on the mode suggested by the Local Commissioner, who had been appointed earlier. That decree was challenged by the respondent-State before the learned District Judge, Bhiwani, who vide the impugned judgment dated 14.3.2009, remanded the case to the learned Additional Civil Judge (Senior Division), Loharu, primarily on the ground that the construction upon the suit property had not been mentioned anywhere by the Local Commissioner appointed. A direction was given to the trial Court to appoint a new Local Commissioner to decide the mode of partition, or to itself decide the mode of partition.

That is the judgment which has been challenged by the appellants, essentially on the ground of maintainability thereof, in view of the fact that the preliminary decree was never challenged, and the appeal filed before the learned first appellate Court was also time barred.

3. On 12.5.2014, a coordinate Bench formulated the following questions of law for consideration:-

- “1. Whether the appeal filed on behalf of the defendant-respondents against the final decree before the first appellate Court was maintainable in view of the fact that no objections were filed to the mode of partition and the preliminary decree has already become final?
2. Whether the judgment and decree passed by the lower appellate Court is perverse and deserves to be set aside?”

4. Mr. Goel, learned counsel for the appellants, however submits that, as a matter of fact, the appeal may be disposed of in view of the

preliminary decree, simply holding that the construction made by the respondent-State upon 19 kanals-16 marlas of land that it was held to be entitled to, would not be disturbed, but otherwise the partition, as ordered by the preliminary decree and affirmed by the final decree, would be executed, as ordered.

5. Learned counsel for the State submits that since the State is not disputing the fact that it is entitled to only 19 kanals- 16 marlas of land, he has no objection to the same and as such, the appeal may be disposed of in terms of the statement made by learned counsel for the appellants, so as to ensure that no part of the construction made by the State, on the suit land, is disturbed, and it continues to remain in its ownership and possession, alongwith the 19 Kanals and 16 marlas of land that fall to the States' share.

6. It is to be noticed here that none of the other parties to the *lis*, other than the State, had ever filed any appeal, against either the preliminary decree, or even the final decree, as stated by learned counsel for the appellants.

In fact, vide an order dated 01.12.2009, passed in this appeal, service upon respondents No.2 to 6 was dispensed with by this Court, upon a statement made by learned counsel for the appellants, that the said respondents had been proceeded against *ex parte* even before the learned first Appellate Court. Similarly, vide an order dated 12.05.2010, service upon respondents No.7 to 12 was also dispensed with, on a statement made by learned counsel for the appellants. In the meanwhile, on 11.12.2009, Civil Miscellaneous Application No.13811-C of 2009, having been filed, under Order 1 Rule 10 CPC, the Municipal Committee, Loharu, had sought to be impleaded as a respondent in this appeal, as already noticed and considered in

detail, upon which notice had been issued in the application, to which the appellant had filed a reply dated 02.03.2010. The said application has already been dismissed vide an order passed in this very judgment, at the outset, for the reasons contained therein.

7. Mr. Goel, learned counsel for the appellants, had submitted in relation to the application, that the State had duly been given its share in the preliminary and final decree passed on partition of the property and as such, the Municipal Committee, in any case, has no interest in it, as already noticed.

8. Consequently, with service upon respondents No.2 to 12 having been dispensed with vide earlier orders of this Court and the application of the Municipal Committee eventually having been dismissed as not pressed today, the only contesting respondent is the State of Haryana, through the Collector, District Bhiwani (respondent No.1).

In view of the above, and upon statements having been made by counsel for both the parties, as aforesaid, this appeal is accordingly allowed. The judgment of the learned lower appellate Court remanding the case to the learned Additional Civil Judge (Senior Division), Loharu, is set aside and the preliminary and final decrees passed by the learned trial Court are affirmed, subject to the statements made as referred to herein above, by both the counsel for the parties, which the parties are held bound to. A decree sheet be drawn up accordingly.

July 26, 2016

Davinder Kumar/dinesh

**(AMOL RATTAN SINGH)
JUDGE**