

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

RSA No.4212 of 2011 (O&M)

Date of decision : 10.03.2016

Bach Ram and ors.

...Appellants

Versus

Ram Dia and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Sanjay Verma, Advocate for the appellants.

Mr. Rakesh Gupta, Advocate and
Mr. Harsh Garg, Advocate for the respondent Nos.1 to 3.

Mr. Balvinder Singh Brar, Advocate for respondent No.4.

AMIT RAWAL, J. (Oral)

CM No.12206-C of 2011

Applicant through this application has sought the permission of this court to file the appeal.

For the reasons stated in the application, application is allowed.

Applicant is granted permission to file the appeal.

CM No.12207-C of 2011

For the reasons stated in the application, which is duly supported by an affidavit, delay of 2789 days in filing the present appeal is condoned.

Application stands allowed.

Main case

Mr. Sanjay Verma, learned counsel appearing on behalf of appellants submits that trial Court erroneously dismissed the suit holding that as per previous order passed by the Collector dated 10.12.1993, the respondents-plaintiffs have been held to be in possession. However, before the appellate Court, the Gram Panchayat colluded with the respondent-plaintiff and did not contest the appeal and proceeded ex parte, but lower Appellate Court decreed the suit. It is in these circumstances, the appeal was filed. The Lower Appellate Court ought not to have decreed the suit as previous order only pertains to the possession passed in proceedings under Section 13-A of the Punjab Village Common Land Act, 1961 and thus urges this Court to formulate following substantial question of law:-

1. Whether in view of Order dated 10.12.1993 passed in proceeding under Section 13-A of the Punjab Village Common Land Act 1961, the subsequent suit claiming ownership was maintainable or not.

Mr. Rakesh Gupta and Mr. Harsh Garg, learned counsels appearing on behalf of respondents submits that order dated 10.12.1993 passed by the Collector held that property in dispute though was found to be in possession of the plaintiff does not vest in the Gram Panchayat, much less, fall in the definition of the shamlat deh and the present suit was filed only to claim the declaration and this fact is evident from Ex.P5 and Ex.P6 and thus prays that appellants-applicants have no right to file the appeal.

I have heard learned counsel for the parties and appraised the paper book.

The respondent-plaintiff in the instant case instituted a suit claiming ownership on the basis of the order dated 10.12.1993 and proceeding initiated under Section 13-A of 1961 Act which resulted into passing of following decree:-

“This appeal coming before me to day in the presence of Sh. O.P. Tiwari, Advocate for the appellants and Sh. Surender Kumar, L.O. for respondent. It is ordered that the appeal of the appellants is accepted by setting aside order dated 11.9.89 of lower court. The suit of the appellants filed in lower court is decreed to the effect that the suit land does not come into the definition of shamlat deh. The same therefore does not vest in the Gram Panchayat. The appellants cannot be ejected from the land in dispute.”

In view of the aforementioned order, the suit land did not vest in the Gram Panchayat, much less, fall within the definition of the shamlat deh, in essence it tantamounts to confirming the right and interest upon the plaintiff and thus, the second suit on the same cause of action was not maintainable.

In view of the aforementioned facts, judgment and decree rendered by the lower Appellate Court would be treated as nullity for the reasons that the subsequent suit in view of the aforementioned order was not maintainable.

Question of law as noticed above is answered in favour of appellant and against the respondent-plaintiff.

Appeal is allowed.

10.03.2016

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**(AMIT RAWAL)
JUDGE**