

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3418 of 2012

Date of Decision: 27.01.2016

Gram Panchayat Bachhuana

... Petitioner(s)

Versus

Randhir Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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. Arun Abrol, Advocate
for the appellant.

None for the respondents.

Shekher Dhawan, J.

Present regular second appeal is against concurrent findings of both the Courts below dated 26.4.2011 and 26.4.2012, passed by the Court of first instance and First Appellate Court, whereby suit filed by the plaintiff-Gram Panchayat for declaration was dismissed and appeal filed by the Gram Panchayat was also dismissed.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance. Relevant facts for the purpose of decision of the present appeal that Gram Panchayat, Bachhuana, Tehsil Budhlada, District Mansa had filed suit for declaration

that Gram Panchayat is owner of land measuring 1 kanal situated within the revenue estate of village Bachhuana. Appellant-Gram Panchayat got constructed a dispensary after obtaining grant of ₹ 1,50,000/- from Punjab Government for the welfare of villagers. A resolution was passed in favour of Hukam Chand and Baldev Singh, Panches, to defend with the litigation.

Defendants No.1 & 2 filed Civil Suit No. 1209 dated 9.11.2005 titled as "Randhir Singh and others v. Gram Panchayat". In that case, Local Commissioner was appointed by the Court, who had submitted his report dated 6.1.2006 that Government dispensary was running on the spot and defendants No.1 & 2 have no concern with the same. Thereafter, defendants No.1 & 2 did not appear intentionally and that civil suit was dismissed on 11.9.2006. Application for restoration of Civil Suit No. 1206 dated 9.11.2005 was filed and the same was decided on 11.9.2006. Defendants No.3 & 4 by taking undue advantage of the authority having been given by Gram Panchayat and in connivance with defendants No.1 & 2, suffered statement in their favour that they have no objection if suit is restored. Defendants No. 3 & 4, in order to give benefits to defendants No.1 & 2, suffered statement that they would not take possession by dispossessing the plaintiff forcibly and illegally from the suit land. Though defendants No.3 & 4 have no right to do the same. Defendants no.3 & 4 were well within their knowledge regarding report of the Local Commissioner as well. As per plaintiff-Gram Panchayat, defendants No.1 & 2 claimed themselves to be owner in possession of the suit land on the basis of statement dated 22.8.2009.

Requests made by the plaintiff were of no use and as such necessity of the suit.

Defendants No.1 & 2 contested the present civil suit before the Court of first instance and filed written statement taking the plea that defendants No.3 & 4 had never suffered statements in their favour. However, earlier Civil Suit No. 1209 dated 9.11.2005 was dismissed in default on 11.9.2006. Thereafter, application for restoration of the same was filed and summons were sent to the Gram Panchayat. Gram Panchayat passed a resolution and appointed defendants No. 3 & 4 to pursue the said case and compromise was effected between defendants No.1 & 2 with Gram Panchayat that it would not take forcible possession of the land over which the dispensary was being constructed. Defendants No.3 & 4 had not admitted the possession of the answering defendants. Rather they had admitted possession of defendants No.1 & 2 over the land of their houses and the answering defendants had given up their claim regarding the land of dispensary. The answering defendants had not taken any benefit of the statements made by defendants No.3 & 4 in the Lok Adalat. On merits, defendants No.1 & 2 submitted that suit property is in their possession and prayed that suit be dismissed.

On these facts, following issues were settled:

- "1. *Whether the plaintiff is entitled for declaration as prayed for? OPP*
2. *Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*

3. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*

4. *Relief."*

Both the parties led their respective evidence and the Court of first instance, after appreciating the evidence, denied the fact that the defendants had admitted that they had made statements before the Lok Adalat in good faith and without reading the same. Their statements had been recorded in Lok Adalat, which is not acceptable and suit of the plaintiff was dismissed. The first appeal was also dismissed by the Court of First Appeal and as such present appeal.

Notice of the appeal was given to the respondents and they were duly served, but failed to put in appearance and contest the appeal.

Learned counsel for the appellant submitted that two Panches, who were authorized by the Gram Panchayat, made statement and main suit of the plaintiff was dismissed. Thereafter, membership of two Panches was suspended. Both the Courts below have not returned any finding on the point whether Gram Panchayat is owner of 1 kanal of land where dispensary has been constructed with the grant having been proved by the Punjab Government. It is not the case of the defendants that they are owner of the suit property. Rather in the written statement, defendants No.1 & 2 admitted that Gram Panchayat is owner of the suit property. Both the Courts below simply recorded the fact that defendants No.3 & 4 as well as defendants No.1 & 2 had made statements before the Lok Adalat admitting that defendants No.1 & 2

were in possession of the suit property and they should not be dispossessed from the suit property in accordance with law and as such finding recorded by both the Courts below are liable to be dismissed.

Having considered the submissions made by learned counsel for the parties and having gone through the record of the case file, this Court is of the considered view that the controversy before the Court of first instance as well as the First Appellate Court was whether Gram Panchayat, who is appellant before this Court, was the owner in possession of 1 kanal of land situated within the revenue limits of village Bachhuana, as detailed in the head note of the plaint or not. The other controversy involved in the case whether dispensary was constructed in the suit land with the grant of ₹ 1,50,000/- having been received from the Punjab Government. On the basis of pleadings itself and on the basis of evidence adduced by the Gram Panchayat, it stands proved that Gram Panchayat is owner of the suit property measuring 1 kanal. It has also been proved on record that construction of dispensary was raised on the suit land and report of Local Commissioner in earlier Civil Suit No. 1209 dated 9.11.2005 is also on the file. In the light of such evidence being available on the file, there is no reason or occasion for both the Courts below to record findings against Gram Panchayat. Both the Courts below have recorded erroneous finding on the basis of mis-appreciation of evidence.

Resultantly, present appeal is accepted and suit of plaintiff/appellant Gram Panchayat is decreed that Gram Panchayat is owner of the land measuring 1 kanal, as detailed in the head note of

the plaint and construction of dispensary was raised on the suit land and the defendants have got no right, title or interest in the suit property.

(Shekher Dhawan)
Judge

January 27, 2016
"DK"