

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

248

CR-2677-2015(O&M)

Date of Decision:11.08.2017

Mehtab (since deceased) through his LRs

.....Petitioners

Versus

Gram Panchayat Gulalta and another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.**

**Present: Mr.C.B.Goel, Advocate,  
for the petitioners.**

**Mr.Sunil Dhanda, Advocate,  
for Mr.Rajesh Lamba, Advocate,  
for respondent No.1.**

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**RAMESHWAR SINGH MALIK, J.(Oral)**

Present revision petition, at the hands of judgment debtor, filed under Article 227 of the Constitution of India, is directed against the order dated 11.03.2015, whereby the learned Additional District Judge allowed the miscellaneous appeal of decree holder/Gram Panchayat, setting aside the order dated 16.11.2013 of the learned trial court, whereby execution petition of the decree-holder was disposed of observing that the decree was unexecutable.

Notice of motion was issued.

Heard learned counsel for the parties.

This case has a long and chequered history. It was alleged by the respondent-Gram Panchayat that in spite of the fact that suit land was

absolute ownership of Gram Panchayat and the judgment debtor-Mehtab was in illegal possession thereof, he colluded with the then Sarpanch of the Gram Panchayat. As a result of collusion between Mehtab and the then Sarpanch of the Gram Panchayat, civil suit No.197 of 1973 titled as “Mehtab Versus Gram Panchayat” was filed which came to be decreed vide judgment and decree dated 18.04.1974. It was this civil court judgment and decree which were challenged by the Gram Panchayat in a subsequent civil suit No.1292 dated 22.12.2001. Suit filed by the Gram Panchayat came to be decreed by the learned court of competent jurisdiction vide its judgment and decree dated 14.01.2006, setting aside the abovesaid judgment and decree dated 18.04.1974, holding that the said judgment and decree were based on fraud and misrepresentation.

Mehtab challenged the judgment and decree dated 14.01.2006 passed by the learned trial court but he lost in the first appeal. He filed regular second appeal before this Court bearing RSA No.3705 of 2006. Simultaneously, respondent-Gram Panchayat filed the suit under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (for short the “Act of 1961”) against Mehtab before the Assistant Collector 1<sup>st</sup> Grade, Ferozepur Zhirka. Mehtab took the plea of *res judicata* on the ground that the earlier civil court decree dated 18.04.1974 was in his favour. The Assistant Collector 1<sup>st</sup> Grade, Ferozepur Zhirka, vide its order dated 18.01.1985 held that suit shall continue to proceed further because the earlier decree dated 18.04.1974, in a suit for permanent injunction, was based on fraud and misrepresentation, which will not operate as *res judicata*, in the suit for title pending before him.

Mehtab approached the Commissioner, Ambala Division,

Ambala, under the Act of 1961 against the order dated 18.01.1985, which was set aside by the Commissioner, Ambala Division, Ambala, vide his order dated 18.10.1985, saying that even if the decree dated 18.04.1974 was a collusive decree, Gram Panchayat ought to have challenged the said decree by filing its separate and independent suit. Challenging the order dated 18.10.1985 passed by the Commissioner, Ambala Division, Ambala, respondent-Gram Panchayat approached this Court by way of CWP No.3385 of 1986, which came to be allowed by a Division Bench of this Court. In fact, both these cases CWP No.3385 of 1986 as well as RSA No.3705 of 2006 came to be decided together by a Division Bench of this Court vide its order dated 06.07.2012.

Relevant observations made by the Division Bench, while allowing the writ petition, are as under:-

*“We have heard counsel for the parties in respect of the writ petition and are of the considered opinion that the writ petition deserves to be succeed because no documentary evidence has been led by respondent No.3 to prove that he is owner of the land in dispute except for the decree dated 18.04.1974, which is based upon collusion of the earlier Sarpanch. In Gram Panchayat of village Naulakha's case (supra), it has been held that an incidental finding on title in an earlier suit will not be binding in a later suit or proceeding where title is directly in question, unless it is established that it was necessary in the earlier suit to decide the question of title for granting or refusing injunction and that the relief for injunction was founded or based on the finding on title. In the present case, there is no such finding recorded in the suit for permanent injunction filed by respondent No.3 who had not sought any declaration of his title over the land in dispute.*

*In view thereof, the writ petition is allowed, impugned order dated 18.01.1985 is hereby quashed and the matter is remanded back to Assistant Collector 1<sup>st</sup> Grade, Ferozepur Zhirka to decide the case on merits”.*

Operative part of the order dated 06.07.2012 passed by the Division Bench of this Court, dismissing the regular second appeal of petitioner-Mehtab, reads as under:-

*“In view of the aforesaid decision, even filing of the second suit was not required, but once it has been held by both the Courts below that the land in dispute is Shamlat Deh and the decree dated 18.04.1974 was obtained by fraud and collusion, it can be challenged at any time. We are therefore, of the considered opinion that questions of law, which have been framed at the time of admission of appeal, are not involved as such, in view of the facts and circumstances of the present case. Hence, the Regular Second Appeal is hereby dismissed being based upon a finding of question of fact recorded about ownership and title of the Gram Panchayat over the land in dispute.”*

It is pertinent to refer the relevant part of judgment and decree dated 14.01.2006 passed by the learned Civil Judge, Ferozepur Zhirka and the same reads as under:-

*“A decree for declaration to the effect that decree and judgment dated 18.04.1974 passed in suit No.197/73 titled Mehtab V. Gram Panchayat passed by the then Sub Judge, Palwal, is illegal, null and void and not binding upon the rights of plaintiff and that order Ex.D9 and affidavit Ex.D-10 show that defendant is presently in possession of suit land and since plaintiff has prayed for any other relief which the Court thinks fit and appropriate, under these circumstances, a decree of possession is also passed in favour of plaintiff directing defendant to restore the*

*possession to plaintiff within a period of two months from today. As a period of 31 years has passed ever since decree dated 18.04.1974 was passed, hence, I do not deem it appropriate to order for registration of criminal case against present defendant. Costs be also awarded to plaintiff.”*

After dismissal of the first appeal filed by defendant-Mehtab against the abovesaid judgment and decree dated 14.01.2006 by the learned first appellate court, he filed the abovesaid RSA No.3705 of 2006 before this Court, which was dismissed vide order dated 06.07.2012, whereas vide same order the abovesaid CWP No.3385 of 1986 (Gram Panchayat Versus State of Haryana and others) was allowed. Mehtab-defendant-judgment debtor approached the Hon'ble Supreme Court but failed. Thus, judgment and decree dated 14.01.2006 has already attained finality against judgment debtor-defendant Mehtab.

It was the abovesaid judgment and decree dated 14.01.2006 which was sought to be executed by respondent-Gram Panchayat by way of its execution petition No.52 of 2006 filed under Order 21 Rule 32 CPC. However, the learned executing court proceeded on a wholly misconceived and erroneous approach, while passing its order dated 16.11.2013 (Annexure P-1) holding that the decree dated 14.01.2006 was unexecutable. It was this order of the learned executing court which was challenged by the respondent-Gram Panchayat by way of miscellaneous appeal before the learned Additional District Judge. Said civil miscellaneous No.72 of 2013 filed by the respondent-Gram Panchayat came to be allowed by the learned Additional District Judge vide his impugned order dated 11.03.2015 (Annexure P-2).

The arguments raised by the learned counsel for the petitioners

are based on technicalities alone. When he was confronted with the abovesaid relevant part of the judgment and decree dated 14.01.2006, whereby a decree of possession was also passed in favour of the respondent-Gram Panchayat, directing the defendant-petitioners herein to restore the possession to plaintiff-Gram Panchayat within a period of two months, he had no answer and rightly so, because the said decree has attained finality in favour of the respondent-Gram Panchayat and against the petitioners, upto the Hon'ble Supreme Court of India.

Once the specific decree passed by the learned court of competent jurisdiction vide its abovesaid judgment and decree dated 14.01.2006, including the decree for possession, has become final in favour of the respondent-Gram Panchayat, neither there was any ambiguity in the decree nor there was any other scope for entertaining any doubt that the judgment debtor-petitioners herein were bound to hand over the vacant possession to the decree holder-respondent Gram Panchayat. Having said that, this Court feels no hesitation to conclude that the learned Additional District Judge was well within his jurisdiction to pass the impugned order dated 11.03.2015 and the same deserves to be upheld.

Fraud vitiates everything. It was so held by the Hon'ble Supreme Court in **S.P.Chengalvaraya Naidu (dead) by LRs Versus Jagannath (dead) by LRs and others, AIR 1994 SC 853.** Entire case of Mehtab-predecessor-in-interest of the petitioners was based on fraud and misrepresentation right from day one. He had been dragging the respondent-Gram Panchayat in this wholly unwarranted litigation with a view to satisfy his unending lust for the land in question. Such a dishonest litigant whose case is based on fraud and malafide intention has no place in

a court of law. This kind of litigant can be and must be thrown out of the court at any stage of the litigation and sooner the better.

It is so said because our justice delivery system which is based on the cardinal principle of truth cannot be permitted to be polluted at the hands of disgruntled and dishonest litigants. In this view of the matter, it can be safely concluded that the learned Additional District Judge committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

When the learned counsel for the petitioners was asked about the status of proceedings under Section 13-A of the Act of 1961 before the competent authority, in compliance of the order dated 06.07.2012 passed by this Court in CWP No.3385 of 1986, he expressed his ignorance. Be that as it may, even if said proceedings are treated to be pending, said fact will not stand in the way of execution of the decree for possession dated 14.01.2006. Because this decree dated 14.01.2006 has already attained finality in favour of the respondent-Gram Panchayat and against the petitioners, upto the Hon'ble Supreme Court of India. Further, the judgment and decree dated 14.01.2006 are not under challenge in any other collateral legal proceedings. Instant one has not been found to be a fit case, warranting any interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is misconceived, bereft of

merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, instant revision petition stands dismissed, however, with no order as to costs.

August 11, 2017  
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**(RAMESHWAR SINGH MALIK)**  
**JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No