

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.1532 of 2016
Date of decision:31.1.2017**

Dharambir

...Appellant

Versus

Zile Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Vivek Khatri, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned judgments and decrees passed by the learned courts below, recording concurrent findings of facts, dismissing his suit for declaration, plaintiff has approached this Court by way of present regular second appeal.

Heard learned counsel for the appellant.

It is a matter of record that the suit property was village pond. Ownership of village pond shall vest in the Gram Panchayat. Though, the appellant was plaintiff and onus was on him to prove his case but he failed to do so that the suit land was not vested in the Gram Panchayat. In such a situation, plaintiff-appellant would have no locus standi to initiate the instant litigation. Further, since it was a simple suit for declaration without any consequential relief, suit in the present form would also not be maintainable. Having said that, this Court feels no hesitation to conclude that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

Learned counsel for the appellant could not point out any

patent illegality of perversity in either of the impugned judgments and decrees passed by the learned courts below, which are based on concurrent findings of facts. Plaintiff also could not prove his pleaded case that his forefathers had donated the suit land for public interest or for the purpose of village pond. Onus was on the plaintiff to prove his pleaded case but he failed to do so by leading cogent evidence. It was also the pleaded case of the plaintiff-appellant himself that suit land vested in the Gram Panchayat, however, Gram Panchayat was not impleaded as one of the defendants. In this view of the matter, the suit of the plaintiff-appellant was not maintainable nor appellant was having any locus standi to file the present suit.

The facts of the case as well as evidence available on record were reconsidered and re-appreciated by the learned first appellate court, in correct perspective, before recording its own cogent findings in support of just conclusion. Relevant findings recorded by learned first appellate court in paras 20 to 23 of the impugned judgment, which deserve to be noticed herein, read as under: -

“It is case of the plaintiff that his forefathers had donated the suit land for public interest for the purpose of pond, so that it may be used by the villagers. Thus, it was incumbent upon the plaintiff to prove it by leading cogent evidence that his forefathers had donated the suit land for the public interest for the purpose of pond, so that it may be used by all the villagers but no such evidence has been lead by the plaintiff. It is also added that plaintiff has not even placed on record entry in consolidation in this regard. On the other hand, defendants have placed on record copy of plaint Mark-B of the case titled as “Om Parkash etc. vs. Ompati” and copy of decree sheet Mark-A in the said case, which proved that Zile

*Singh son of Ram Gopal and Om Parkash, father of the defendants no.2 to 5 had become owners of the suit land. Moreover, it is settled principle of law as laid down by the Hon'ble Punjab & Haryana High Court in case titled **Baru's case (Supra)** that where the land as mentioned in column no.8 of the Jamabandi as Gair Mumkin Johar then presumption cannot be drawn that land was Shamlat deh or it had been vested or deemed to have been vested in Gram Panchayat. If in the column of ownership names of co-sharers appear and in column of cultivation Makbuja Malkan is mentioned then possession of the owner would be deemed. It is further held that had it been property of Gram Panchayat or Shamlat deh there would have been entry in column no.4 & 5. In the present case perusal of the Jamabandi Ex.P10 for the year 1997-98 made it ample clear that defendants no.1 to 5 were in possession of part of the suit land and in the column of possession, they have been shown in possession. Thus, the land never vests in Gram Panchayat nor it can be said Shamlat Deh. Similar view was taken in CWP titled **Deva Singh's case (Supra)**. Thus, the defendants no.1 to 5 were competent to sell part of suit land in favour of the defendants no.6 to 9.*

As regard this contention that defendant no.3 Devender, who was minor alongwith other defendants had executed the sale deed dated 23.03.2005 Ex.P2 part of suit land in favour of the defendants No. 6 to 9 and defendant no.5 Jaibir, who was minor had executed the sale deed dated 11.07.2005 Ex.P1 part of suit land in favour of defendants No. 6 to 9 and therefore the sale deeds Ex.P1 and Ex.P2 are deemed to be void is concerned, the said contention of learned counsel for the plaintiff is devoid of merits. Even if the defendant no.3 Devender and defendant no.5 Jaibir were minors then the plaintiff has no locus standi to challenge the aforesaid sale deeds Ex.P1 and Ex.P2 because such type of transactions are voidable at the option of the minors. The minors during their life time can challenge the same through guardian and they

*can challenge the same after attaining the majority within three years. As such the case laws **Ram Kishan's case (Supra)** and **Gurdawara Shri Kalyan Sir Amritsar, Sirsa's case (Supra)**, relied upon by learned counsel for the plaintiff are not attracted to the facts and circumstances of the present case.*

Moreover, in this case the plaintiff in his cross-examination has admitted that his father had purchased the part of the suit land from Om Pati and had taken the possession and is cultivating on it. If plaintiff himself had purchased some part of the suit land from Om Pati then he cannot challenge the sale deed dated 11.07.2005 Ex.P1 and sale deed dated 23.3.2005 Ex.P2 on the ground that the suit land was reserved for pond as plaintiff himself is wrong door, as per his own version.

*It is also added here that a perusal of Jamabandi Ex.P10 for the year 1997-98 further reveals that there were other co-sharers in the suit land. Moreover, plaintiff has specifically stated that land had vested in Gram Panchayat but plaintiff had not made party to Gram Panchayat and other co-sharer in the suit. Thus, the suit is not maintainable in view of the law laid down in **Jagtu case's (Supra)** wherein it has been held that in the absence of owner of the land the declaration of certain rights over the suit land admitting the factual position of the land could not be granted. Thus, the sale deeds Ex.P1 & Ex.P2 are perfectly right and no injunction can be granted in favour of the plaintiff. Accordingly, the findings given by the learned trial court on Issue No.1 & 2 do not require any interference and the same are upheld.*

During the course of hearing, learned counsel for the appellant could not point out any question of law, much less substantial question of law, which is *sine qua non* for entertaining the regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section

100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

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 appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the instant regular second appeal stands dismissed, however, with no order as to costs.

31.1.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No