

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

**RSA No.1176 of 2017
Date of decision:2.3.2017**

Baldev Singh and others

...Appellants

Versus

Mehar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Rahul Sharma, Advocate for the appellants.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant regular second appeal, at the hands of plaintiffs, is directed against the judgment of reversal dated 6.12.2016 passed by the learned Additional District Judge, whereby first appeal of the defendants was allowed and the judgment and decree dated 18.2.2014 passed by the learned trial Court, decreeing the suit for permanent injunction, were set aside.

Succinctly put, facts necessary for disposal of the present appeal, as noticed by the learned first appeal in para 2 of its impugned judgment, are that plaintiffs filed a suit against the defendants claiming that they were suing in representative capacity under Order 1 Rule 8 of the Code of Civil Procedure ('CPC' for short), contending that they had common interest in the suit property, which was being used as cremation ground and shed and boundary wall had been constructed thereon since time immemorial. The defendants being a political gang having interest adverse to the welfare of the village, removed the cremation grounds to another place and were threatening to damage and demolish the cremation shed and

boundary wall already constructed. Request in this regard had been refused. Earlier, a suit was filed by one of the defendants Mehar Singh, which was dismissed as withdrawn and the Gram Panchayat of village Bishanpura had made a statement in that case, but now new Gram Panchayat had been elected and the members alleged that the resolutions passed by the earlier Panchayat were void because two members who signed the resolutions were not even member of the Gram Panchayat.

Having been served, defendants put appearance and filed their contesting written statement, raising more than one preliminary objections. Defendant No.14 filed his separate written statement. Replication was filed by the plaintiffs. On completion of pleadings of parties, learned trial court framed the following issues.

- 1) Whether the plaintiffs are entitled for permanent injunction as prayed for? OPP.
- 2) Whether the suit is not maintainable in present form ? OPD
- 3) Whether the plaintiff have no cause of action & locus standi to file the present suit ?OPD
- 4) Whether the plaintiffs are stopped from filing present suit by own act and conduct ?OPD
- 5) Whether this court has no jurisdiction to try and decide this suit? OPD.
- 6) Relief

In order to prove their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing learned counsel for the parties and going through the evidence brought on record,

learned trial court came to the conclusion that plaintiffs have proved their case. Accordingly, suit for permanent injunction was decreed vide judgment and decree dated 18.2.2014. Feeling aggrieved, defendants filed their first appeal, which came to be allowed by the learned first appellate court, vide its impugned judgment and decree dated 6.12.2016. Hence this regular second appeal, at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

It is a matter of record and not in dispute that the suit was filed by the plaintiffs-appellants under Order 1 Rule 8 CPC, in representative capacity. It is also a matter of record that plaintiffs did not seek any permission of the Court, as required under Order 1 Rule 8 (1)(a) and Order 1 Rule 8 (2) CPC, which are relevant for the purpose of decision of instant appeal, deserve to be noticed here and the same reads as under:-

8. One person may sue or defend on behalf of all in same interest.-

(1) Where there are numerous persons having the same interest in one suit,—

(a) one or more of such persons may, with the permission of the court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not

reasonably practicable, by public advertisement, as the court in each case may direct.”

A bare perusal of the above-said provisions of law contained in Order 1 Rule 8(1) (a) CPC, would make it crystal clear that for the purpose of filing the suit in representative capacity, permission of the Court is mandatory in nature. Whenever permission is sought and granted by the learned court of competent jurisdiction, to file the suit in the representative capacity, then the next mandatory requirement would be to give notice of institution of the suit to all persons so interested, either by personal service or by public advertisement, as the learned court may direct. The court shall ensure effecting such service on all the interested persons at the plaintiff's expense.

As noticed by the learned first appellate court in para 12 of its impugned judgment, no permission of the court was sought by the plaintiffs-appellants to file the suit in representative capacity, as it required under Order 1 Rule 8 (1) (a)CPC referred to hereinabove. Once there was no such permission sought or granted, the suit could not have proceeded any further. Again, it is also a matter of record that provisions of Order 1 Rule 8 (2) were also not complied with as no service was effected on all the persons interested, either by personal service or by publication. Since suit property was admittedly a cremation ground, ownership thereof was undisputedly vesting in the Gram Panchayat, who was not even made as party-defendant in the suit by the plaintiffs-appellants and for no good reasons.

In fact, neither the Gram Panchayat nor the general public has been made party, for the reasons best known to the plaintiffs-appellants.

Owing to the nature of suit property, it being a cremation ground, every resident of the village would be an interested person. The Gram Panchayat being the true owner of the suit property was a necessary party. Similarly, general public was also a necessary party, because other residents of the village would have an interest in the suit property. However, neither the Gram Panchayat nor the General Public were impleaded as party-defendants and in such a situation, the suit in the present form would not be even maintainable. Having said that, this Court feels no hesitation to conclude that the learned appellate court was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld.

The above-said view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court as well as by this Court:-

1. **Kalyan Singh Vs. Smt.Chhoti, 1990 (1) SCC 266;**
2. **Singhai Lal Chand Jain (dead) Vs. Rashtriya Swayam Sewak Sangh, Panna, 1996(3) SCC 149;**
3. **Jai Narain and others Vs. Chandgi Ram and others, 1977 PLJ 527 (DB) (P&H);**
4. **Basheshwar Dass Vs. Zile Singh, 2001 (3) RCR (Civil) 459 (P&H);**
5. **Daya Chand Vs. Shamlat Patties Med Singh and others, 2011 (5) RCR (Civil) 212 (P&H);**
6. **Dharampal Vs. Pale Ram and others, 2012 (5) RCR (Civil) 964 (P&H).**

Coming to the judgments relied upon by the learned counsel for the appellants in **Hari Ram Vs. Jyoti Prasad, AIR 2011 SC 952** and **Madho Singh Vs. Moni Singh, AIR 2004 SC 4316**, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, none of them has been found to be of any help to the appellants,

being clearly distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533**, **Union of India Vs. Amrit Lal Manchanda and others**, 2004 (3) SCC 75, **State of Orissa Vs. Md. Illiyas**, 2006 (1) SCC 275 and **State of Rajasthan VS. Ganeshi Lal**, 2008 (2) SCC 533.

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's case** (supra), reiterating its view taken in **Amrit Lal Manchanda's case** (supra) and **Mohd. Illiyas's case** (supra), which can be gainfully followed in the present case, read as under:-

11. "12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii)

judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

*Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. **Ed.** See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.*

12. 15....Courts should not place reliance on

decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p.

761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

Reverting to the facts of case in hand and respectfully

following the law laid down by the Hon'ble Supreme Court as well as by

this Court, in the judgments referred to hereinabove, it is unhesitatingly held that the suit of the plaintiffs-appellants, in representative capacity, has been rightly dismissed by the learned first appellate court, for want of mandatory permission of the court, as required under Order 1 Rule 8 (1) (a) CPC and also for non-compliance of mandatory provisions of law contained in Order 1 Rule 8 (2) CPC. Suit of the plaintiffs-appellants was bound to fail for non-joinder of necessary parties and it was also not maintainable in the present form. The irresistible conclusion is that the learned first appellate committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason also.

Learned first appellate court re-considered and re-appreciated the facts and evidence available on record, before recording its own cogent findings. Relevant findings recorded by learned first appellate court in para 16 to 18 of its impugned judgment, which deserve to be noticed here, read as under:-

“It is a matter not in dispute that the impugned judgment and decree and has been passed in the matter of a suit filed under Order 1 Rule 8 in the representative capacity. Perusal of the record reveals that the Gram Panchayat and the General Public has not been made a party. The land under the cremation ground vests in the panchayat and the gram panchayat has not been arrayed as a party. In fact in the suit filed in representative capacity. Even though the suit is said to have been filed in re representative capacity, permission of the Court had not been sought as is required under Order I Rule 8 (1)(a). Only if the permission had been granted, the suit could have proceeded further and in fact once the permission had been granted, it was required of the plaintiffs to give notice of the institution of the suit to all persons so interested either by

personal service, or by public advertisement and that too at the expense of the plaintiffs. But in the present case no permission was sought and it is not just an irregularity which could be brushed aside because the judgment and decree would have ramifications on all the inhabitants of the village and especially the gram panchayat.

In fact, given the written statement that had been filed by the contesting defendants, it emerges that the crux of the matter is the determination of a fact as to whether the cremation ground of the village is situated in the land bearing Khasra number 60 or is it situated in land bearing Khasra number 272 as such a mere suit for permanent injunction was not maintainable and the proper remedy was to file a suit for declaration. Accordingly, the suit was not maintainable on this form also.

In view of the discussions herein above, this Court is of the opinion that the suit had not been filed in accordance with the settled procedure of law and the suit was also not filed in proper form. As such, the findings of the Learned Trial Court cannot be sustained and the same are accordingly liable to be set aside.”

Learned counsel for the appellants could not point out any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286.***

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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, the impugned judgment and decree passed by the learned appellate court are upheld.

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

2.3.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

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