

Second Appeal No.593 of 2017
(Shabbir Shah Kalandar Shah .vs. Hasan Shah Usman Shan)

Mr. A.P. Chaware, Advocate for Appellant.
Mr. Rajnish Vyas, Advocate for Respondent.

By this appeal, the appellant has challenged judgment and order dated 06.09.2017 passed by the District Judge-1, Link Court, Malkapur (appellate Court) in Regular Civil Appeal No.38 of 2012. By this judgment and order, the appellate Court has dismissed the appeal of the appellant and confirmed the judgment and order passed by the Court of Joint Civil Judge, Junior Division, Malkapur (trial Court), whereby the suit filed by the respondent was decreed.

2. The facts leading up to filing of this appeal are that on 29.12.2004, the respondent filed Regular Civil Suit No. 116 of 2004 before the trial Court, contending that the appellant herein had installed a stall (Tapri) near the door in front of shop no.1 belonging to the respondent (plaintiff). It was claimed that the said stall has been installed on Government land and that it was blocking light and air of the said shop no.1. It was further claimed that the appellant was playing tape-recorder loudly and creating noise, thereby causing

further nuisance to the respondent. On this basis, the respondent prayed for removal of the said stall and sought permanent injunction against the appellant restraining him from obstructing the respondent from access to the Government road.

3. The appellant resisted the claims of the respondent and he relied upon resolution dated 14.09.1993 (Exh.73) passed by the Gram Panchayat permitting him to keep the said stall. The said resolution granted permission to the appellant for a period of 11 months in respect of keeping such a stall. It was contended that since he had valid permission, the prayer made by the respondent in the suit did not deserve to be granted.

4. On the basis of the pleadings of the parties and evidence led before it, the trial Court framed issues for determination, including issue pertaining to limitation and as to whether the aforesaid stall was blocking air and light of shop no.1 belonging to the respondent. On the basis of the evidence and material on record, by judgment and order dated 05.07.2006, the trial Court granted decree in favour of the respondent, declaring that the aforesaid stall installed by the appellant in front of shop no.1 of the respondent was unlawful and a further direction was given to the appellant to remove the said stall.

5. Aggrieved by the same, the appellant filed Regular Civil Appeal No.38 of 2012 before the appellate

Court. By the impugned judgment and order dated 06.09.2017, the appellate Court has dismissed the appeal, thereby confirming the decree passed by the trial Court in favour of the respondent.

6. Aggrieved by the said judgment and order, the defendant no.1 before the trial Court, has filed the instant appeal. On 10.10.2017, this Court framed the following substantial question of law for consideration:-

“Considering the nature of relief sought by the plaintiff of removing the stall of the defendant on the basis of resolution at Exhibit-58, whether the Gram Panchayat was a necessary party to the suit?”

7. Mr. A.P. Chaware, learned counsel appearing on behalf of the appellant, submits that when the respondent himself had relied upon resolution dated 13.01.2005 (Exh.58) passed by the Gram Panchayat for removal of the aforesaid stall, the Gram Panchayat was a necessary party to the suit and that, therefore, the Courts below had erred in granting decree in favour of the respondent.

8. On the other hand, Mr. Rajnish Vyas , learned counsel appearing on behalf of the respondent submitted that the Gram Panchayat was not a necessary party to the suit because a perusal of the plaint would show that the respondent had claimed that the stall had been kept on Government land and that in any case the thrust of the case of the respondent was that the said stall was blocking air and light of shop no.1 owned by

the respondent and it was blocking access of the respondent to the Government road. According to the learned counsel appearing for the respondent, since the grievance of the respondent pertained to nuisance caused by the installation of the stall by the appellant, the Gram Panchayat was not a necessary party to the suit.

9. In this context, although the trial Court did not frame an issue, the appellate Court had framed specific point, as to whether the Gram Panchayat was a necessary party to the suit. While rendering a finding on the same, the appellate Court found that the respondent had alleged that the stall was on Government land and no cause of action was claimed against the Government. It was also noted that no relief was sought against the Gram Panchayat and that since the suit was for declaration and injunction against the appellant, the Gram Panchayat was not a necessary party.

10. While contending that the said finding rendered by the appellate Court was erroneous, the learned counsel appearing on behalf of the appellant has contended that the appellants had laid claim to their right to install the aforesaid stall in pursuance of resolution dated 14.09.1993 (Exh.73) passed by the Gram Panchayat. In this backdrop, it was contended that the Gram Panchayat was a necessary party.

11. A perusal of the pleadings in the plaint, the

nature of relief sought by the respondent and the main grievance of the respondent would show that in the present case the respondent was aggrieved by the blockage of air and light due to installation of the stall by the appellant and obstruction of access to the Government road. The prayers made in the suit filed by the respondent pertained to action to be taken against the appellant for the obstruction that was being caused by the said stall. Apart from the prayer for removal of the said stall, permanent injunction was also sought by the respondent to restrain the appellant from causing any obstruction in the way of air and light of the shop owned by the respondent. Considering the nature of reliefs sought by the respondent and the fact that the respondent was able to show that the aforesaid stall did block air and light to the shop owned by him, it cannot be said that absence of Gram Panchayat as one of the defendants would render the suit filed by the respondent as defective.

12. The resolutions referred to by both the sides, even if ignored, would not affect the nature of relief sought by the respondent in the suit filed against the appellant. The reliance placed on the said resolutions by the appellant to claim that absence of the Gram Panchayat is fatal to the suit filed by the respondent, is misplaced. A perusal of the said resolutions would only show that the appellant claimed to have permission in the year 1993 itself for installation of the said stall, but, beyond that, the said resolution at Exh.73 does not take the case of the appellant any further because, as rightly

found by the Courts below, the cause of action for the respondent to file the suit was triggered when the stall caused blockage of light and air to the shop owned by the respondent and it caused nuisance. The Courts below have found that the cause of action accrued to the respondent when he first lodged complaint to the Police on 23.04.2002 and that the appellant could not show that he had installed the stall in 1993 itself pursuant to the said resolution of the Gram Panchayat. The resolution dated 13.01.2005 (Exh.58) was passed after filing of suit by the respondent on 29.12.2004. Therefore, it is not the basis for claiming relief by the respondent and this is clear from the pleadings on record. Therefore, looked at from any angle, it cannot be said that Gram Panchayat in the present case, in the context of the relief sought by the respondent, was a necessary party to the suit.

13. Accordingly, the aforesaid question is answered in favour of the respondent and against the appellant. No other issue has been argued in the present appeal. The appellant has failed to demonstrate any perversity in the concurrent findings rendered by the Courts below. Accordingly, the appeal is dismissed with no order as to costs.

14. The learned counsel appearing on behalf of the appellant submits that the interim order passed by this Court on 10.10.2017 may be continued for a period of four weeks. The learned counsel appearing on behalf of the respondent objects to the same. In that view of

the matter, the interim order passed by this Court is continued for a further period of three weeks from today. It is made clear that no further extension of the interim order shall be granted.

JUDGE

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