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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-4920-2016

Date of decision : 07.02.2018

Gram Panchayat Rampur Haler

... Petitioner(s)

Versus

Dalip Singh (deceased through LRs) and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Satbir Rathore, Advocate
for the petitioner(s).

Mr. K.S. Dadwal, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present revision petition at the instance of the petitioner-Gram Panchayat is directed against the order dated 03.03.2016 (Annexure P-9), whereby in a petition filed under Order 21 Rule 32 CPC, an application dated 01.03.2016 (Annexure P-7) moved by the decree holder for issuance of appropriate directions to the respondent(s) in the suit to accept the balance sale consideration amount of ₹60,750/- and with a permission to cut the trees, has been allowed.

Mr. Satbir Rathore, learned counsel appearing on behalf of the petitioner-Gram Panchayat, defendant No.6 in the Civil Suit No.192/1985 which was decreed on 23.07.1986, submitted that respondent No.1/plaintiff-Dalip Singh instituted a suit for declaration with a permanent injunction to the effect that he is owner/purchaser of the trees in the public auction held

on 16.02.1983 by Gram Panchayat Village Rampur Haler under the supervision of Social Education and Panchayat Officer, Dasuya/defendant No.5 and approved by District Development and Panchayat Officer, Hoshiarpur/defendant No.3, standing in the plot No.2 of defendant No.6/petitioner-Gram Panchayat bearing Khasra No.1011, 1015, 1016/1, 1977, 1978, 1989, 1007, 1008, 1009, 1010, 1950, 1954, 1979, 1985 and 1986 situated in Village Rampur Haler, P.S. Hajipur, Tehsil Dasuya with permanent injunction as consequential relief restraining the defendant(s) from claiming any right in the trees standing in the land in dispute except the right of balance sale price of the trees under the terms of the auction, which was decreed *ex parte* vide judgment and decree dated 23.07.1986. The decree accorded the plaintiff's status of owner/purchaser of the trees in the public auction held on 16.02.1983, conducted by the petitioner-Gram Panchayat/defendant No.6. The respondent(s)-plaintiff(s) remained silent for number of years. However, in the year 2016, he filed a petition bearing CWP No.3030 of 2010 by challenging the auction notice dated 09.02.2010 issued by the Gram Panchayat with regard to the trees. The aforementioned writ petition after contest was disposed of by this Court vide order dated 30.07.2010. The execution application under Order 21 Rule 32 CPC was filed in the year 2013 and the issue has already been framed as culled in paragraph 4 at page 5 of the revision petition, but despite the pendency of the aforementioned application, a miscellaneous application, as indicated above, was moved, which has been allowed by allowing the decree-holder to deposit the balance amount of ₹60,750/- with a permission to cut the trees in accordance with the judgment and decree *ibid*.

He further submitted that the aforementioned decree of

injunction cannot be executed after almost a period of 24 years i.e. on 04.12.2010 as the trees by this time had been destroyed for it would arduous to identify the trees. No explanation has come forward in not moving the application at an early stage. In support of his contentions, he relies upon the *ratio decidendi* culled out by this Court in **“Gram Panchayat of Village Bhaddi V/s Om Parkash” 1988(1) RRR 247.**

On the contrary, Mr. K.S. Dadwal, learned counsel appearing on behalf of the respondent(s)-plaintiff(s) submits that the application moved by the Gram Panchayat for dismissal of the execution application as the provisions of Article 136 of the Limitation Act, was dismissed vide order dated 08.02.2016 (Annexure P-6), which has attained finality. When the order was passed by this Court, in the aforementioned writ petition, the application under Order 21 Rule 32 CPC was filed. He undertakes that the trees which have been mentioned in the decree and head note of the suit shall only be cut by giving a specific khasra numbers, that to under the orders of the Forest Department, as during all this period, the notification under Punjab Land Preservation Act, 1900 was in vogue, which fact is evident from the pleadings made in the suit. During the subsistence of the aforementioned notification issued under the PLPA Act, no person can be permitted to cultivate or cut the trees without permission of the Forest Department. This Court can also impose any condition, which it deems appropriate, so that, the trees, which have been grown during this time, as per order of forest officials, are not cut, so that, no loss is caused to the Gram Panchayat.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and force in the

submissions of Mr. Rathore, for, it is a matter of fact that the order dated 08.02.2016 (Annexure P-6) seeking dismissal of the execution application being barred by law of limitation has attained finality. It would be apt to extract the head-note of the decree, the relevant portion of the decree, Khasra Numbers mentioned in the order dated 30.07.2010 as well as the operative part of the order dated 30.07.2010, which read as under:

“Head-note of the decree

Suit for declaration with permanent injunction as consequential relief to the effect that plaintiff is the owner/purchaser in Public Auction held on 16.2.1983 by defendant No.6 under the Supervision of defendant No.5 and approved by defendant No.3 of the trees standing in plot No.2 of defendant No.6 bearing Khasra No.1011, 1015, 1016/1, 1977, 1978, 1989, 1007, 1008, 1009, 1010, 1950, 1954, 1979, 1985 and 1986 situated in Village Rampur Haler, P.S. Hajipur, Tehsil Dasuya and as such the defendants be restrained from claiming any right in the trees standing in plot No.2 with Kh. Nos. as detailed above.

Relevant portion of the decree

It is ordered that an ex-parte decree with costs in favour of the plaintiff and against all the defendants is granted for declaration to the effect that the plaintiff is the owner/purchaser in public auction held on 16.2.1983 by defendant No.6 under supervision of defendant No.5 and approved by defendant No.3 of the trees standing in the land in dispute fully described in the head note of the plaint with permanent injunction as consequential relief restraining the defendants from claiming any right in the trees standing in the land in dispute except the right of balance sale price of the trees under the terms of the auction.

Khasra Number mentioned in the order dated 30.07.2010

“3. That the respondent No.4 issued a proclamation for public

auction of standing trees in Khasra Nos. 1011, 1015, 1016/1, 1977, 1978, 1989, 1007, 1008, 1009, 1010, 1950, 1951, 1979, 1985 and 1986 situated in village Rampur Haler, PS Hajipur, Tehsil Dasuya, District Hoshiarpur on 16.2.1983.”

The operative part of the order dated 30.07.2010

“In view of the categoric stand taken by the Gram Panchayat and by the State, the present writ petition is disposed of with a direction that the judgment and decree (Annexure P-2) shall be strictly complied with by the respondent-Gram Panchayat and no trees, which were subject matter of the judgment and decree (Annexure P-2), shall be put to auction till the judgment and decree stands. This direction has been issued in view of the stand taken by respondents, however in case, still any grievance of the petitioner persists he shall approach the executing Court for enforcement of the decree or in case of disobedience shall invoke Order 39 Rule 2A of Civil Procedure Code.”

Once this Court had already issued a direction to the Gram Panchayat and the respondent, therein, for strict compliance of the judgment and decree by giving a liberty to the decree-holder to approach the Executing Court for enforcement of the decree, it is, in this backdrop of the matter, as stated above, the application was filed. In my view, there would be no ambiguity or confusion, in case the order dated 03.03.2016 passed by the trial Court granting the permission to the decree-holder on deposit the balance consideration of ₹60,750/- to cut the tree, after seeking permission from the District Forest Officer, Dasuya.

Since Mr. Dadwal during the course of the hearing has undertaken that cutting of the trees can be done under supervision of the Range Officer, I deem it appropriate to put a caveat in the order dated 03.03.2016 (Annexure P-9) that the order, aforementioned, shall be

implemented under the supervision of Range Officer, so that, some other trees grown during the interregnum, may not be cut.

There is no dispute to the *ratio decidendi* culled out in the judgment cited supra, but the fact of the matter is that this Court had already affirmed the decree in the order, therefore, the *ratio decidendi* culled out in the judgment cited supra do not apply, particularly when a direction has been issued by this Court allowing the decree-holder to cut the trees under the supervision of the Range Officer.

With the aforesaid direction, the present revision petition stands disposed of by upholding the impugned order, under challenge.

07.02.2018 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No