

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

106

CR No.5647 of 2017 (O&M)
Date of decision:13.12.2018

Amar Singh and another

... Petitioners

versus

Gram Panchayat Shamtoo

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.R.K.Moudgil, Advocate,
for the petitioners
Mr.Pawan Jhanda, AAG, Haryana
Mr.Anuj Balian, Advocate,
for the respondent
...

AMOL RATTAN SINGH, J. (Oral)

1. By this petition, the petitioners challenge the order of the learned trial Court dated 31.5.2017 (copy Annexure P-7), by which their application filed under Order 39 Rules 1 and 2 CPC (the petitioners being the plaintiffs before that Court), has been dismissed.

2. When this petition initially came up for hearing on 5.9.2017, the following order had been passed:-

“Learned counsel for the petitioners states that Khasra No.174 is comprised 17 Marlas of land and two rooms are constructed there. This fact is also reflected in the Jamabandi for the year 2011-12.

Notice of motion for 02.12.2017.

In the meantime, respondent is restrained from interfering in the possession of the petitioners over two rooms, which have

been constructed by them.”

Thereafter, upon the notice issued in this petition having been served upon the respondent Gram Panchayat, it was adjourned for two dates simply for learned counsel for the respondent to place on record the power of attorney executed in his favour by his client, after which on the 'adjourned date', i.e. 12.7.2018, the matter was taken up out of turn on request of learned counsel for the respondent, on the ground that the petition itself had become infructuous with the civil suit filed by the petitioners having been dismissed in default.

Naturally, since the case had been taken up out of turn on the request of learned counsel for the respondent, learned counsel for the petitioners was not present on that date. Consequently, the matter was adjourned to 17.7.2018, to be shown in the urgent list. On that date, the following order was passed:-

“As already noticed in the order dated July 12, 2018, learned counsel who had appeared for the respondent, had informed this Court that the suit itself from which this revision petition arises, had been dismissed in default.

Consequently, on that date this petition having been taken up out of turn on request of learned counsel for the respondent, it otherwise having been listed far down the ordinary motion list, it had been adjourned till today, to be shown in the urgent list.

Today learned counsel for the petitioner appears and submits that he has to verify as to whether the suit has been

restored or not, or in fact whether any application for restoration thereof has also been filed or not.

Adjourned to 19.07.2018.

To be shown in the urgent list.

It is made clear that if instructions are not obtained by learned counsel by that date as aforesaid, obviously the suit itself not existing, this petition would stand dismissed with the interim order vacated.”

On 19.7.2018, though learned counsel for the petitioners is not shown to be present in the top part of the order, it seems that he was present at the time when the case was first called because the last part of the order reads as follows:-

“Upon learned counsel submitting that the passage as is existent actually is not being hindered by the two rooms constructed on a small portion thereof and the balance of convenience would still lie in favour of the petitioners, this Court had put a query to learned as to whether the petitioners are labourers or land owners. Learned counsel for the respondent has taken instructions that petitioner no.1, who is the son of petitioner no.2, is a volunteer in the Haryana Home Guard and also owns 2 acres of land.

Learned counsel for the petitioners, on second call, not being present, adjourned to 23.07.2018.

To be shown in the urgent cause list.”

Since the Bar was abstaining from work on 23.7.2018, the

matter was adjourned to 12.10.2018. In the meanwhile, an application was filed by the respondent Gram Panchayat seeking vacation of the interim order passed by this Court on 5.9.2017, and on 12.10.2018, since the suit land in question was stated to be in the ownership of the Gram Panchayat and therefore is public land, this Court had directed the SDM, Panchkula, to personally inspect the spot and have measurements taken as to whether, as regards the land in dispute, as was contended to have been encroached upon, there was actually any encroachment, or the encroachment had already been removed in terms of a letter of the Block Development and Panchayat Officer, Barwala, addressed to the District Development and Panchayat Officer, Panchkula, on 8.5.2017, as has been annexed as Annexure P-9 with the petition.

Thereafter, in response to the aforesaid direction, an affidavit of Shri Pankaj Kumar, Sub Divisional Officer (Civil), Panchkula, was filed on 5.12.2018, with learned counsel for the petitioners again not present on that date.

As per the said affidavit, the suit land was got demarcated on 5.11.2018 in the presence of the following persons:-

- “1. Nambardar, Village,
2. Amar Singh son of Rashan Lal,
3. Sanjeev son of Puran Chand,
4. Sarpanch of Village (Sonia w/o Manjit),
5. Kamaljeet son of Mamraj,
6. Bhushan Lal son of Karam Chand,
7. Sandeep son of Jaipal Singh,

8. Karnail Singh son of Chhajju Ram,
9. Karam Singh son of Chohal Singh,
10. Baljit son of Malkhan,
11. Khem Singh, Ex.Sarpanch,
12. Ranbir son of Bachna Ram,
13. Man Singh son of Chohal Singh,
14. Sherjang (SEPO),
15. Halqa Patwari, and
16. Halqa Girdawar”

It is to be noticed that at sr.no.2 is the name of petitioner no.1, Amar Singh.

As per the affidavit of the SDO (Civil)-cum-SDM, Panchkula, 4 marlas 4 sarsahi of land falling in khasra no.174 has been encroached upon by the petitioners.

3. Today, learned counsel for the petitioners submits that as regards the application seeking restoration of the suit (out of which this petition arises), it is still to be decided by the learned trial Court, with it now to come up for hearing on 17.1.2019.

He further submits that this case had been taken up out of turn on various dates only on request of learned counsel for the respondent Gram Panchayat, thereby prejudicing the petitioners.

Still further, he submits that the petitioners having constructed their house about 30 years ago even upon what is contended to be a passage vesting in the Gram Panchayat, admittedly the said construction is not hindering the passage in any manner and therefore the petitioners deserve an

interim injunction in their favour till the decision of the suit, which has been erroneously declined vide the impugned order.

4. *Per contra*, learned counsel for the respondent Gram Panchayat points to the impugned order itself, wherein a finding has been recorded by the learned trial Court that prior to the suit being filed by the petitioners, one Baljit Singh had filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, for ejectment of the present petitioners from the passage, which was allowed by the Assistant Collector Ist Grade, Panchkula, on 18.10.2012, against which order the present petitioners filed an appeal, which was dismissed by the Collector, Panchkula, on 8.10.2013.

A revision was thereafter filed by the petitioners which too was dismissed by the Commissioner, Ambala Division, vide an order dated 8.4.2015.

That order was then challenged by way of CWP No.16969 of 2015 before this Court, which was disposed of with liberty granted to the petitioners to approach the Gram Panchayat or the competent authority “to make out a case under Rule 12(3) of the Rule (*ibid*), if so permissible”. (Quote taken from the order of this Court in the aforesaid writ petition).

The petitioners thereafter approached the Collector, Panchkula, seeking that they be allowed to purchase the suit land in terms of the aforesaid rule (which learned counsel for the petitioners submits is actually sub rule (4) of Rule 12 of the Punjab Village Common Lands (Regulation) Rules, 1964 (as applicable to State of Haryana), with that application also having been dismissed on 15.12.2006, with it having been found that the

petitioners had actually raised construction only in the year 2010 and that too on a *rasta*, after an injunction order had been passed by the Court (seemingly the revenue Court).

Thus, that application had been dismissed by the authority concerned, holding that the relief sought in the application was beyond the scope of the rule, which only allowed a person occupying land falling within the *shamlat deh* to purchase it, and not land falling within a passage/*rasta*.

Thereafter, in execution proceedings before the Assistant Collector Ist Grade, the Kanungo was directed to make a demarcation of the property and get the illegal construction removed, with such demarcation having taken place on 17.2.2017.

Accordingly, in the aforesaid background, the impugned order came to be passed by the learned trial Court, dismissing the application of the petitioners, filed under Order 39 Rules 1 and 2 CPC, holding that there was no balance of convenience in their favour.

5. Before this Court, learned counsel for the petitioners has again reiterated that the petitioners constructed their house on the suit property more than 30 years back and therefore the respondents cannot be allowed to remove such construction forcibly and if at all it is to be removed, it can only be by due process of law.

He further submits that even as per the site plan annexed with the affidavit filed by the SDO, the suit land is not shown to be encroaching upon the actual *rasta* but falling to one side of it. He thus submits that even the finding of the competent authority, while rejecting the application of the

petitioners filed under Rule 12 aforesaid, is a perverse finding, to the effect that it states that the construction encroaches upon a *rasta* which is not seen to be so even as per the site plan annexed along with the affidavit of the SDO (civil), Panchkula, in this petition.

6. Having considered the matter, though undoubtedly what learned counsel for the petitioners has pointed out from the site plan annexed with the affidavit of the SDO (Civil) does show that the construction is on the left side of the *rasta*, with there being, at least visibly as per the site plan, no encroachment upon the *rasta* itself, yet this Court would find itself unable to grant the relief sought by the petitioners in this petition, for the simple reason that the petitioners having lost right up to this Court in proceedings initiated under Sections 7 and 11 of the 1961 Act, with their application thereafter filed under Rule 12 of the 1964 Rules, (as per the liberty granted by the writ Court), also having been dismissed, not just for the reason that there is an encroachment on the *rasta* (as per that order) but also because the petitioners did not fulfill the conditions necessary for sale/allotment of the suit land to them in terms of the aforesaid rule, as the construction was found to have been made only in the year 2010 (and not before 31.3.2000), and that too after an interim order had been passed injuncting them against making any construction (seemingly by the revenue Court).

7. Learned counsel for the petitioners submits that the finding on the construction of the house having been raised only in the year 2010 is wholly a perverse finding and therefore the petitioners deserve the injunction prayed for in the present *lis*.

8. That contention too has to be rejected by this Court, in view of the fact that the order passed by the competent authority in terms of Rule 12 of the Rules of 1964, is not impugned before this Court, the impugned order in the present petition being one arising out of the suit thereafter filed by the petitioners seeking a decree of permanent injunction restraining the defendant Gram Panchayat from interfering in the petitioners (plaintiffs') peaceful possession over the suit land.

A decree of permanent (*sic* mandatory) injunction is also sought in the suit directing the defendant 'to regularise the possession of the plaintiffs in terms of Rule 12(3) of the Rules of 1964, (which again learned counsel submits is erroneously shown, as the correction sub rule is '4' and not '3').

9. Learned counsel for the respondent Gram Panchayat counters by saying that the said injunction has been sought without disclosing in the suit that in fact an order has already been passed by the competent authority on the application filed under sub rule (4) of Rule 12 and consequently, there is a concealment of fact by the petitioners even before the learned trial Court, other than the fact that the trial Court has no jurisdiction to try such a suit.

10. Considering the entire conspectus of facts and events, though the petitioners obviously had their remedy against the order passed against them on the application filed under Rule 12(4) of the Rules of 1964, they have chosen to avail instead the remedy of a civil suit, where possibly jurisdiction may not lie to set aside the order passed in terms of the aforesaid rules, but even if that issue is not to be gone into by this Court in

this revision petition, (the issue of jurisdiction not being before me), what this Court cannot ignore is the factum of the order passed in the aforesaid proceedings under Rule 12(4) having been concealed from the trial Court by the petitioners; and further, that order (on the application under Rule 12 (4)) not having been challenged so far and therefore it being an order subsisting against the petitioners, with the proceedings under Section 7 of the Act of 1961 in any case having attained finality.

Thus, I do not see how learned counsel can contend that the eviction sought of the petitioners is not as per due procedure, such eviction/removal of encroachment having been ordered in execution proceedings before the competent revenue Court.

11. Consequently, finding no merit in this petition, it is dismissed.

13.12.2018

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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No