

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

RSA No.1866 of 2007

Date of Decision.22.01.2018

Pirbhu s/o Kabul Singh

.....Appellant

Vs

Mehtab Singh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rakesh Nehra, Advocate
for the appellant.

Mr. Aman Dhir, Advocate
for respondent No.1.

Mr. R.S. Kundu, Advocate
for respondent No.3.

Mr. S.P. Chahar, Advocate
for respondent No.4.

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AMIT RAWAL J.(ORAL)

The revival of the regular second appeal in hand, which was disposed of almost 8 years ago by this Court, is on account of the order dated 12.03.2012 passed by Hon'ble Supreme Court in Civil Appeal No.2759 of 2012 titled as "Mehtab Singh and others Vs. Pirbhu and another" whereby the judgment passed by this Court was set aside and the case was remitted for fresh disposal directing this Court to first consider whether any substantial question of law arises for its consideration and then decide the same after keeping in view of the provisions of Section 100 CPC.

The controversy started when the respondent/defendant No.4- Gram Panchayat of the village initiated proceedings against the appellant under the provisions of Section 7 of the Punjab Village Common Land Act by pleading that the appellant-plaintiff was in unauthorised occupation of

house constructed on Khasra No.129 of village Johar. On the direction of the Asstt. Collector, Rohtak demarcation was conducted which was to the satisfaction of both the parties and remained unrebutted, as no objection was preferred by either of the parties. The Asstt. Collector, Rohtak on 14.6.1993 passed an order, operative part of the same reads as under :-

“After seeing the report of the Tehsildar very carefully, I have reached the conclusion, that the land which is shown in the map as ABCD, is not the part of khasra no.129. Respondent himself accepted that the Gram panchayat is the owner of khasra no.129 as has been stated in his statement. Even according to section 2-g(4), Khasra no.129 comes within the definition of Shamlat deh, because, it is gair mumkin Johar and is being used for public purposes. So this suit is dismissed to the extent that disputed land is not part of khasra no.129, which is shown in the map as ABCD and it does not vest in the panchayat deh. Whereas, khasra no.129 vests in the Panchayat deh.”

Against aforementioned order, an appeal was preferred before the Collector, Rohtak by Karan Singh, Ex-Panch and two others. The Gram Panchayat Dabodha Khurd was also made party in those proceedings. The Collector on the basis of the report of the Local Commissioner concluded that the appellant-plaintiff had encroached upon 1 marla of land i.e. 4 karam in the east, 4 karam in the west and 4 karam in the south by placing mud and ordered the ejectment of the appellant from this portion. The relevant portion of the order of the Collector dated 19.4.1994 is reproduced below :-

“I have heard the arguments of counsel for all the parties and

have perused the record of the lower court very carefully. As per jamabandi Ex.A-4 disputed land is part of Johar and Panchayat is the owner. During the course of the argument counsel for the appellant has raised the objection that disputed land has not been demarcated as per rule. I have again demarcated this land by AC Ist Grade Bahadurgarh in presence of both the parties. Both the parties are satisfied with this demarcation and all of them accept this demarcation. As per the report dated 22.3.94 by the AC Ist Grade, disputed land is the part of Khasra no.129 and Gram Panchayat is the owner of this land. Respondent Pirbhu has illegal possession over the part of disputed land by placing the earth, on one Marla land i.e. 4 karam in the east, 4 Karam in the west, and 4 Karam in the south. Satbir Respondent No.3 has installed a door 5 karams towards the side of Johar from the marks shown in the Aks Sazra, which is installed with the intention to encroach the land. Therefore, I accept the appeal and pass the order that Pirbhu is ejected from the one marla land (4 x4 Karam) and Satbir is directed to close the door which is installed at a distance of 5 karam and due to this installation of the door, the land which comes in illegal possession, he is also ejected from this land. ...”

In the year 2010 i.e. after six year of the passing of the aforementioned order of ejectment, the appellant-plaintiff being threatened with demolition of his house filed the suit for permanent injunction seeking restraint against the respondents-defendants from interfering in his peaceful

possession over the house and from demolishing the same. The respondents-defendants contested the suit by denying the ownership of the appellant and pleaded that there was encroachment upon the land of the Gram Panchayat despite competent court ordered the eviction of the appellant from the said area. The site plan and nature of property being ancestral was denied but the proceedings before the Asstt. Collector and Collector were admitted being a part of the record. In short, the defence was raised that the demolition which was sought for was justified as the orders of the revenue authorities had become final.

The trial Court vide order dated 2.6.2000 granted injunction restraining the respondents from interfering in the possession of the appellant. The Gram Panchayat Dabodha Khurd moved an application on 21.7.2000 to get itself impleaded as a party, which was allowed on 26.7.2000. Thereafter, there was default of non-participation in the proceedings and was proceeded ex-parte on 29.11.2002. In the meantime, on 26.7.2000 i.e. the date on which the Gram Panchayat was impleaded as party, the house of the appellant was demolished. The appellant thereafter preferred an application under order 39 Rule 2-A CPC seeking prosecution of the respondents for having violated the orders of the Court vide which injunction was granted. The contempt petition was also dealt with along with the main suit. The trial Court concluded that the respondents had violated the orders of the Court and while decreeing the suit of the appellant-plaintiff also directed the respondents to reconstruct/restore the house in its original condition within two months from the date of pronouncement of the order failing which the appellant was entitled to reconstruct the house at the site in question at his own expenses and recover

the same from the respondents. It also punished Mehtab Singh, Munshi Ram, Raj Singh i.e. defendant Nos.1 to 3, BDO Liakit Ali Khan and Satbir to undergo civil imprisonment for one month for willful and deliberate disobedience of the order dated 2.6.2000.

In an appeal filed by the present respondents No.1 to 3, the findings of the learned trial Court were reversed. The first Appellate Court primarily observed by that the demolition was carried out pursuant to the directions of the Collector and therefore there was no infirmity in the action of the respondents who were merely acting under the orders of the Collector dated 19.4.1994. In this backdrop of the matter, the present appeal has been preferred.

Learned counsel for the appellant contended that the respondents were not authorised to carry out the demolition more so when neither the order of the Asstt. Collector nor the order of the Collector contemplated such action. It was further contended that despite the injunction order dated 2.6.2000, which was in the knowledge of the respondents and even the Gram Panchayat which had got itself impleaded as a party on 26.7.2000, the same was violated by carrying out the demolition. He thus submitted that the judgment of the learned trial Court was justified while the judgment of the first Appellant Court is erroneous.

Learned counsel for the respondents No.1 to 3, on the other hand, justified the judgment of the first Appellate Court and contended that no role was attributed to respondents No.1 to 3 in the demolition of the house of the appellant, much less, no infirmity can be said to have been committed by the first Appellate Court.

Respondent No.4 Gram Panchayat despite having been served had not put in appearance and was proceeded against ex-parte on 10.3.2010.

I have heard the learned counsel for the parties and perused the paper book. A perusal of the orders passed by the Asstt. Collector and Collector would reveal that they never contemplated demolition of the house of the appellant as interpreted by the first Appellate Court. As a matter of fact, the appellant was found to be in unauthorised possession of only a small portion of Khasra No.129 on which he had placed the mud. By no stretch of imagination can such an order be construed as the one which authorised the demolition of the entire house of the appellant. At best, the only exercise that could have been undertaken by the respondents was that the mud which was lying in the disputed area could have been removed. There is no dispute regarding the demolition of the house of the appellant as observed by the trial Court that the demolition was carried out but it was justified by the first Appellate Court, which is erroneous and perverse.

The argument raised by the respondents-defendants that the exercise of demolition was carried out purportedly in compliance of the orders of Asstt. Collector and Collector, which was justified by the lower Appellate Court, is out of blue. An order of injunction binds all the parties to a dispute and no party can take the liberty of flouting the same. In the instant case, the action of the respondents in demolishing the house of the appellant was an utter contempt of the order of injunction. At the most, the Collector could order for ejectment of the appellant-plaintiff from the portion of land, which was in his unauthorized occupation and not for demolition of the entire house. Once a Court grants injunction and if any other competent authority has granted any right to the contrary, the same

has to be kept in abeyance and cannot be executed, in view of the injunction granted by a civil court. If the respondents had any doubt about the execution of the orders of the Asstt. Collector and Collector, even if they had understood it to mean carrying out the demolition, the proper course for them would have been to get a clarification from the civil court rather than pursuing a path which was in complete disregard of the law of land.

A plea has been raised by respondents No.1 to 3 that they had nothing to do with the demolition of the house of the appellant. I am afraid the contention of the said respondents has to be repelled.

A bare reading of the written statement filed by the said respondents revealed the concern with the demolition that had been carried out as they repeatedly said that the orders of the Asstt. Collector and Collector were justified and warranted the demolition of the house. The conduct of the respondents as inferred from the written statement is abundantly clear that they were having interest in the demolition of the house of the appellant. That apart, if the testimony of the respondents' witnesses is to be seen, they have categorically stated that they had come with the Sarpanch of the village and were interested in the demolition of the house of the appellant because of factional rivalry in the village.

The Gram Panchayat was necessarily required to be punished for violating the orders as it made an application for impleading itself as a party on 2.7.2000 and was impleaded as such on 26.7.2000. Thereafter, the demolition was carried out on 26.7.2000 itself. The Panchayat was conscious of the fact that an injunction had been granted against it. In any eventuality it had chosen not to participate in the proceedings and therefore an adverse inference has to be drawn against it. Their testimony further

reveals that no attempt was made to cross-examine the plaintiff and his witnesses on the role of respondents No.1 to 3. In this eventuality respondents No.1 to 3 as also the Gram Panchayat necessarily have to be held responsible for the demolition that had been carried out. The first Appellate Court, however, did not address this issue at all and has merely interpreted the orders of the Collector to mean carrying out of demolition which as observed earlier could not have been done.

The judgment passed by this Court on 12.05.2010 was set aside by the Hon'ble Supreme Court while remanding the matter back to this Court only on the ground that the High Court decided the second appeal without complying with the mandate of Section 100 of the Code of Civil Procedure. However, in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of

law while deciding the appeal, aforementioned.

In view of the aforementioned, the judgment and decree passed by the lower Appellate Court is set aside and the judgment and decree passed by the trial Court is restored. The second appeal is disposed of in above terms. Decree sheet be prepared accordingly.

(AMIT RAWAL)
JUDGE

January 22, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No