

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: April 02, 2018

1. R.S.A.No.5049 of 2012 (O&M)

Gram Panchayat Jatola

...Appellant

Versus

Smt.Saran Devi & others

...Respondent

2. R.S.A.No.5102 of 2012 (O&M)

Rajnish Kumar & others

...Appellants

Versus

Smt.Saran Devi & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Roopak Bansal, Advocate,
for the appellants in both the appeals.

Mr.Amarjit Markan, Advocate,
for respondent Nos.1 & 2 in both the appeals.

AMIT RAWAL, J. (Oral)

CM Nos.14219-C & 14222-C of 2012 in RSA No.5102 of 2012

For the reasons mentioned in the applications, which are supported by affidavits, delay of 3 days in filing and 22 days in re-filing the appeal is condoned.

Applications stand disposed of.

RSA Nos.5049 & 5102 of 2012

This order of mine shall dispose of two Regular Second Appeals bearing No.5049 and 5102 of 2012 as the common questions of law

and fact are involved.

RSA No.5049 of 2012 is at the instance of Gram Panchayat Jatola-defendant No.1, whereas RSA No.5102 of 2012 is at the behest of defendants No.2 to 11 in Civil Suit No.655 of 2004 preferred by the respondent-plaintiffs against the defendants for permanent injunction, which has been decreed by both the Courts below.

Appellant-defendant No.1 in RSA No.5049 of 2012 and appellant-defendants No.2 to 11 in RSA No.5102 of 2012 challenged the aforementioned findings on the premise that the respondent-plaintiffs had filed a suit for permanent injunction against the appellant-defendants restraining them from raising construction on the disputed land-open court yard marked “ABCD” as per the site plan attached with the plaint. The aforementioned suit was decreed by the trial Court vide judgment and decree dated 5.10.1978 and the appeal preferred by the Gram Panchayat was accepted vide judgment and decree dated 24.4.1980. However, a relief was granted to the plaintiffs for keeping an opening of their house towards the disputed land and use of that land for accessing the street lying in eastern direction. Respondent-plaintiffs preferred a Regular Second Appeal No.1395 of 1980, and this Court vide order dated 25.2.2004, modified the decree of the Addl.District Judge. However, in the meantime, Gram Panchayat initiated the proceedings under Section 7 of the Punjab Village Common Land Act seeking ejectment of the respondent-plaintiffs. The said petition had been dismissed. The defendants preferred an appeal and the Appellate Authority ordered for ejectment from the disputed property. Writ petition was preferred by the defendants, which was decided along with the aforementioned Regular Second Appeal. Now, the defendants have violated

the stay order by raising construction of two walls along with line AB and AD as per the site plan. It was averred that a separate petition under Order 21 Rule 32 CPC was pending adjudication.

The aforementioned suit was contested by the defendants by taking certain preliminary objections qua maintainability of the suit, want of service of notice under Section 205 of the Gram Panchayat Act etc. On merits, it was pleaded that the wall was constructed by the inhabitants of the locality/panna as they had left 7 to 7-1/2 feet street towards western side of house of plaintiffs. The Gram Panchayat was never in possession nor had interrupted the egress and ingress of the plaintiffs. Defendants No.2 to 11 also denied ownership and possession of the disputed land.

The trial Court, on the basis of the aforementioned pleadings, framed the following issues:-

- 1) Whether the plaintiffs are entitled for decree of permanent injunction, as prayed for? OPP
- 2) Whether the plaintiffs have no locus standi to file the present suit? OPD
- 3) Whether the jurisdiction of the civil court is barred under section 13 of P.V.C.I Act to try the present suit? OPD
- 4) Whether the plaintiffs have no cause of action to file the present suit? OPD
- 5) Whether the plaintiffs have not served mandatory legal notice to the answering defendant under Section 205 of Haryana Panchayat Raj Act, OPD
- 6) Relief.

Both the parties led evidence. The trial Court, on the basis of

the documentary evidence brought on record, decreed the suit by restraining the defendants (appellants herein) from raising level of disputed land/court yard marked "ABCD" in any manner, which could restrict or interfere in the right of access to eastern street through the disputed land, which right was granted by the Appellate Court. The aforementioned suit was partly decreed. Three appeals, one by plaintiffs and two by defendants were filed and the same had been dismissed. It is in this background of the matter, the present appeals have been filed.

Mr.Roopak Bansal, learned counsel appearing on behalf of the appellants in both the appeals submitted that there was no violation of the earlier judgment and decree or the order passed by this Court in the Regular Second Appeal, for, the inhabitants of the Village had raised the wall and not the Gram Panchayat. The order of the Addl.District Judge was modified by this Court vide order dated 25.2.2004 by restraining the Gram Panchayat not to interfere in the right of the plaintiffs granted by the first Appellate Court for ingress and outgress to their house from eastern gali. The said access is being maintained and there is no violation, so rest of the land is not wasted. The plaintiffs unnecessarily wanted to drag the issue for no rhyme or reason. The judgments and decrees, thus, are liable to be set-aside.

Per contra, Mr.Amarjit Markan, learned counsel representing respondent Nos.1 and 2 in both the appeals, submitted that separate proceedings initiated under Order 21 Rule 32 CPC seeking implementation of the order dated 25.2.2004, whereby the judgment and decree of the Lower Appellate Court had merged, were dismissed by the trial Court. However, Civil Revision No.425 of 2011 was preferred before this Court.

The same has been decided vide order dated 5.8.2013 in the following

manner:-

“I have carefully considered the aforesaid contentions. The contention raised by counsel for the respondents cannot be accepted. The disputed site was earlier open space so that the petitioners could have access to their house. It is lying towards eastern side of wall AD. The street is clearly depicted in the site plan as lying towards east of site ABCD. However, respondents have constructed the wall inside the site ABCD after leaving 5 feet space towards east of petitioners' house and thereby obstructed access to the house of the petitioners through the site ABCD from the street lying towards east of site ABCD. The respondents have thus clearly violated the decree as passed by this Court.

In view of the aforesaid, the impugned order passed by the executing court cannot be sustained. The said order suffers from patent illegality and jurisdictional error. Resultantly, the instant revision petition is allowed. Impugned order Annexure P/1 passed by the executing court is set aside. The respondents are directed to remove the disputed wall constructed in disputed site ABCD within two months from today failing which they shall be liable to be detained in civil prison for three months and the wall shall be got removed by the executing court.”

He further submitted that the injunction granted by the trial Court is in consonance with the previous order, therefore, no harm or prejudice would be caused to the Gram Panchayat in filing the appeal as it is an attempt to harass the plaintiffs by dragging them into prolonged litigation and, thus, prayed for upholding the concurrent findings.

I have heard the learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is no force and merit in the submissions of Mr.Bansal.

The findings given by this Court while dismissing the Regular Second Appeal No.1395 of 1980 vide order dated 25.2.2004 read thus:-

“The Court, modified the decree passed by learned first Appellate Court to the extent that the respondents would be restrained so as not to interfere in the right granted to the plaintiffs by learned first Appellate Court for ingress and outgress to their house from eastern gali”

The trial Court in pursuance to the aforementioned order, granted the following relief by partly decreeing the suit:-

“15. In sequel to finding in the aforesaid issues, it is held that suit of the plaintiffs is partly decreed to the effect that defendants are restrained from raising level of disputed land/ court yard marked “ABCD” in any manner which could restrict or interfere the right of access to Eastern street through the disputed land and which right was granted to plaintiffs by learned Appellate Courts. Suit stands partly decreed with costs. Decree-sheet be prepared accordingly. File be consigned to the record room, after due compliance.”

The parties are not in controversy with regard to the filing of the previous suit, decision rendered by both the Courts below and as well as filing of the Regular Second Appeal. The only point for consideration is whether the appellant-defendants had violated the order giving cause of action to the respondent-plaintiffs to file the suit and as well as petition under Order 21 Rule 32 CPC and the answer to the aforementioned question is that the appellant-defendants have violated the order giving cause of action to the respondent-plaintiffs to institute the suit as the execution application preferred against the judgment and decree has attained finality vide order dated 5.8.2013. The relevant portion of the same has been extracted (supra).

From the perusal of the aforementioned order, it has been held that the appellants (respondents in the revision petition) have been directed to remove the disputed wall constructed in disputed site ABCD within a period of two months from the date of the order, failing which they have been ordered to be detained in civil prison for three months.

Mr.Markan, as per the instructions and information provided to him by his client, submitted that the said wall has been removed. In my view, the appellants have already implemented the judgment and decree and, therefore, under the garb of the appeals, they want to circumvent the order dated 5.8.2013 rendered in Civil Revision seeking execution of the previous decree. The decree passed in the previous suit is in consonance with the order passed by this Court in the Regular Second Appeal and as well as in the civil revision and the same cannot be said to be suffering from any illegality or perversity giving cause of action to the appellants to challenge the order, much less the argument of Mr.Bansal is not able to convince me to form a different opinion than the one arrived at.

For the reasons stated above, no ground for interference is made out, much less any substantial question of law. Resultantly, the appeals are dismissed.

April 02, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No