

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

Date of Decision: January 30, 2018

1. R.S.A.No.3308 of 2013 (O&M)

Rajender Singh

...Appellant

Versus

**S.D.O., H.S.A.M.B. (Haryana State Agriculture Marketing Board), Market
Committee, Charkhi Dadri, District Bhiwani & another**

...Respondents

2. R.S.A.No.3309 of 2013 (O&M)

Rajender Singh

...Appellant

Versus

**S.D.O., H.S.A.M.B. (Haryana State Agriculture Marketing Board), Market
Committee, Charkhi Dadri, District Bhiwani & another**

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

**Present: Mr.R.A.Sheoran, Advocate,
for the appellant.**

**Mr.Hitesh Pandit, Advocate,
for the respondents.**

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing No.3308 and 3309 of 2013 arisen out of the judgment and decree of the Lower Appellate Court, whereby Civil Suit No.329 of 2009 decreed by the trial Court seeking mandatory injunction directing the defendants to construct street bearing Rect.and Killa No.975 has been dismissed, whereas Civil Suit No.622 of 2009 seeking mandatory injunction

directing the defendants to construct the entire portion of path bearing Rect.and Killa No.964, has been dismissed by both the Courts below.

The case set up, in brief, at the behest of the plaintiff was that he was a bonafide resident of Village Jhojhu Kalan and had a residential house within the Lal Dora of the aforementioned village. The State of Haryana had declared the aforementioned Village as “Adarsh Village” and, therefore, all the streets were to be constructed by RCC. The department had constructed the entire portion of Rasta Saare Aam bearing Khasra No.964 and path in between Khasra Nos.911 and 912 in the length of 16 karam has been left un-constructed without any reasonable cause and as per the policy of the State. The documents proved on record, particularly the Map showed that the department had left the work on their own.

The defendants in pursuance to the notice, contested Civil Suit No.622 of 2009 on the ground that the department had completed the work as per the sanctioned plan and no work had been left unattended and the suit was liable to be dismissed on the ground of non-impleading of the Gram Panchayat and also under the provisions of Section 91 of the Civil Procedure Code.

Mr.R.A.Sheoran, learned counsel appearing on behalf of the appellant submits that the trial Court and the Lower Appellate Court in Civil Suit No.622 of 2009 opined that the suit was not maintainable in the absence of impleadment of Deputy Commissioner, District Development and Panchayat Officer and the Gram Panchayat and held that the suit was not maintainable as per the provisions of Section 91 of the CPC, whereas Section 91 only deals with public nuisance. The relief sought in the suit was simpliciter for mandatory injunction for issuance of directions to the

defendants to complete the construction of the street as the village had fallen under the aforementioned scheme, i.e., Adarsh Village.

As regards Civil Suit No.329 of 2009, he has drawn the attention of this Court to Para 8 of the written statement, wherein the department feigned ignorance with regard to the supply of material, in essence the contents reveal that in view of the shortage of material, they could not complete the RCC path in respect of Killa No.975, though few of the residents of the village caused hindrance and impediment. The trial Court, after appreciating the evidence decreed the said suit, but the Lower Appellate Court keeping in view of the provisions of Section 91 CPC for non-impleadment of the proper parties dismissed the suit and, thus, there is a gross illegality and perversity in the judgment and decree of the Lower Appellate Court.

Per contra, Mr.Hitesh Pandit, learned counsel for the respondents submits that the concurrent findings of facts in RSA No.3308 of 2013 cannot be interfered with. With regard to other appeal, he submits that the suit was liable to be dismissed on account of non-impleadment of the Gram Panchayat, District Development and Panchayat Officer and Deputy Commissioner and the PWD had to execute the work provided to it, much less the material. The entire path had been laid as per the site plan and, therefore, no work was left unattended. All possible evidence which the Gram Panchayat could have brought on record has been led and, therefore, both the Courts below in Civil Suit No.622 of 2009 had drawn an adverse inference and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties and appraised the paper book.

Section 91 of the Civil Procedure Code deals with a public nuisance. Though the aforementioned provisions of the Act had been examined by the Lower Appellate Court, but I am afraid that the said provisions would not apply to the present case as the relief sought in the simpliciter suit was for mandatory injunction for issuance of directions to the defendants to complete the construction of the RCC path in view of the fact that the same had fallen under the aforementioned Scheme. It was not a case of public nuisance or a wrongful act. The department had completed the work of construction of a street owing to the scheme promulgated by the Government for pavement of entire paths by way of a RCC. The contents of Para 8 of the written statement in Civil Suit No.329 of 2009 reveal that the department had shown its helplessness in not constructing the street on account of the non-supply of the material, therefore, it had taken a contradictory stand in both the suits, for, in the other suit, it was categorically stated that the RCC path had been laid as per the sanctioned plan. In my view, the Gram Panchayat would not be a proper and necessary party. If at all, the department had some genuine and reasonable defence, they could not have brought on record the plan and also the survey report or NOC issued at the time it had been allotted the work of completion of the entire path. Having failed to do so, I am of the view that the Lower Appellate Court has misdirected to the facts of the case and has gone in the arena of surmises and conjectures.

In my view, the Lower Appellate Court has abdicated in holding that the plaintiff could not have individually instituted the suit for the relief as envisaged in the aforementioned provisions, but in view of the findings of mine, the aforementioned provisions do not apply to the present

case, thus, it is a fit case where the entire matter requires to be re-visited. In other words, it is a fit case where the Lower Appellate Court should re-examine the matter afresh after re-looking into the rival contentions and the evidence brought on record.

Resultantly, the judgment and decree of the Lower Appellate Court is set-aside and the matter is remitted back to the Lower Appellate Court to decide the appeals preferred by the State in Civil Suit No.329 of 2009 and the plaintiff in Civil Suit NO.622 of 2009 afresh preferably within a period of ten months from the date of receipt of certified copy of this order.

The parties, through their counsel, are directed to appear before the Lower Appellate Court on 1.3.2018.

Both the appeals are disposed of in the aforementioned terms.

January 30, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No