

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

RSA No.5503 of 2014 (O&M)

Date of Order: 01.03.2018

Gram Panchayat

....Appellant

Versus

Mahender Kaur and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Mukul Aggarwal, Advocate for the appellant.

Mr. Rajesh Sethi, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

CM No.13037-C of 2014

For the reasons stated in the application, which is supported by an affidavit, the same is allowed. Delay of 88 days in filing the appeal is condoned.

RSA No.5503 of 2014

Appellant-defendant No.1 has assailed the judgment and decree dated 02.8.2013 rendered by lower Appellate Court, whereby, the appeal of the plaintiffs against the judgment and decree dated 08.6.2010 passed by the Civil Judge (Sr. Division), Fatehabad, dismissing the suit, has been allowed while reversing the findings of the trial Court.

Respondent-plaintiff instituted the suit on the premise that vide jamabandi for the year 2001-02 as well as mutation Nos.8976, 9013 and 9234, the plaintiffs and defendants were co-sharers in the land measuring 4

kanal 0 marla in Khasra No.3590 gair mumkin Toshi abadi. Since the land was not partitioned, the plaintiffs repeatedly requested the defendants for separate possession by way of partition which was not carried out. Being compelled by the circumstances, the plaintiff earlier filed the suit for permanent injunction restraining the defendant-Gram Panchayat from raising further construction without partition of the land. Since the defendants did not accede to their request, the present suit for possession by way of partition was filed.

Appellant-defendant contested the suit by filing written statement and took the pleas of maintainability, cause of action and jurisdiction. On merits, it was stated that the plaintiff had concealed the fact of filing appeal against order dated 22.10.2007 passed on mutation no.8976, which is pending in the court of Collector, Fatehabad as also the order dated 20.9.1999 passed by the Commissioner & Secretary to Government of Haryana, Development & Panchayat Department whereby khasra No.3590 to the extent of 1 kanal 5 marlas has been exchanged with land of Khasra No.2756, 2766 owned by Sardool Singh, Rajinder Singh of Bhuna to the extent of equal area of land. Gram Panchayat, Bhuna vide resolution No.3 dated 22.1.1991 requested for exchange of the land, resultantly the permission was granted by the Commissioner and therefore the plaintiffs were bound by that order because the exchange was in the public interest. He, therefore, prayed for dismissal of the suit.

Defendant Nos.2 to 4 filed reply on the lines of defendant No.1. From the pleadings of parties, following issues were framed by the trial Court:

“1. Whether the plaintiffs are entitled to the separate possession by way of partition of the

land measuring 4 kanals comprised in khasra no.3590 (4-0) situated in village Bhuna, Tehsil & District Fatehabad as alleged?OPP

2. Whether the plaintiffs are entitled to the injunction as prayed for?OPP

3. Whether the suit of the plaintiff is not maintainable in the present form?OPP

4. Whether the plaintiffs have no cause of action as well as locus standi to file the present suit?OPD

5. Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties?OPD

6. Whether the defendants are entitled to the special costs?OPD

7. Relief.”

On the basis of preponderance of evidence, the trial Court dismissed the suit on the ground that as per Ex.P2, the total land owned by Gram Panchayat and all the inhabitants of village was 4248 kanal 15 marlas, 1353 kittas but the partition had been sought only qua khasra No.3590 therefore it was hit by the “Doctrine Of Partial Partition”. Lower Appellate Court reversed the findings by holding that as per jamabandi for the year 2001-2002 (Ex.P.2), the Gram Panchayat was the exclusive owner in Khewat No.4626 and that Khasra No.3590 in which plaintiff got the land, was also exclusively owned by the Gram Panchayat. It was observed that since the exchange was regarding specific khasra number, the plaintiffs became co-sharer in that land only thus, they were not required to show the other property of the Gram Panchayat, therefore the suit was not bad for partial partition.

Learned counsel for the appellant submitted that the judgment and decree of lower Appellate Court is based on misreading of oral evidence on record. Finding of lower Appellate Court is not correct appreciation of provisions of law much less evidence on record as jamabandi revealed that there were number of inhabitants of the village, who were not impleaded as party therefore the impugned judgment and decree deserves to be set aside.

Learned counsel for the respondent-plaintiff submitted that a well reasoned judgment has been passed by lower Appellate Court. It is submitted that in pursuance of the judgment and decreed passed by the lower Appellate Court, final decree has been drawn on 23.2.2017, a copy of which has been produced before this Court and thereafter an application was moved for sanction of the aforesaid construction and that construction has also been raised.

I have heard learned counsel for the parties and appraised the paper book. It is only to be seen whether the findings of the trial Court was correct appreciation of law or otherwise. In my view, lower Appellate Court being the last court of law and facts after appreciation of evidence found that both the Khewat No.4626 as well as Khasra No.3590 were exclusively owned by the Gram Panchayat and the suit could not be dismissed for partial partition. Passing of the final decree has not been disputed by learned counsel for the appellant.

Learned counsel for the respondent, during the hearing of hearing, informed the Court that no appeal has been filed against the final decree dated 23.2.2017. As regards construction and sanction thereof, learned counsel for the appellant has expressed ignorance for want of information from his client.

In view of the aforesaid discussion, the findings of lower Appellate Court is correct appreciation of evidence and do not suffer from any illegality or perversity.

Dismissed.

March 01, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No