

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

R.S.A No.4597 of 2018(O&M)

Date of decision :14.08.2018

The Mundhal Khurd PACS Limited

..... Appellant

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Pardeep Solath, Advocate
for the appellant.

LISA GILL,J.

The appellant-plaintiff is aggrieved of judgement and decree dated 13.02.2013, passed by the learned Additional District Judge, Bhiwani, whereby judgement and decree dated 29.04.2011 passed by the learned Civil Judge (Sr. Division), Bhiwani, has been set aside, consequently dismissing the suit filed by the appellant-plaintiff.

Brief facts necessary for the adjudication of the case are that the appellant-plaintiff society sought relief of mandatory injunction directing the defendants to handover vacant possession of the plot/godown as described in the plaint, where Mundhal Police Post has been set up. Use and occupation charges at the rate of ₹2000/- per month from January, 2004 were claimed as well. It was pleaded that the land in question had been transferred to the Society in the year 1960. Resolution dated 29.08.1960 was passed by the Gram Panchayat, Mundhal Khurd and land was given to the Society for constructing a godown and office therein. The godown in question was constructed by the appellant society. However, in the year 1984, the suit property was given to the police

department on a temporary basis. However, the premises were required by the society, but the police department was not vacating the premises, neither paying the rent thereof to the society. Hence the present suit was filed.

The suit was resisted by the defendants while pleading that the police post was established with the consent of the Gram Panchayat Mundhal Khurd in the year 1984. The plaintiff society was not the owner of the suit property. The place was in a dilapidated condition which was maintained by the department itself. It was further stated that the plaintiff society had no right to seek the vacant possession of the property in question. It is thus prayed that the suit be dismissed.

From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for the possession of the suit property shown as Mark ABCD and Mark EFGH in the site plan, which is stated to be Mundhal Policy Post as alleged?OPP
2. Whether the plaintiff is entitled for the use and occupation charge at the rate of Rs.2000/- per month or whatever is deemed proper by the Court from January 2004 till the possession of the plot for issue, as alleged?OPP
3. Whether the plaintiff has no locus standi to file the present suit?OPP
4. Whether the suit is time barred?OPD
5. Relief.

Evidence was led by both the parties.

Learned trial Court decided issue no.1, 3 and 4 in favour of the plaintiff and issue no. 2 in favour of the defendants. While partly decreeing the suit filed by the plaintiff society, it was observed that the plaintiff would be entitled to a decree of possession of the suit property

subject to payment of advolendum Court fee on the market value of the suit property within 30 days, failing which the suit will be deemed to be dismissed. The requisite Court fee was deposited by the Society within the stipulated time.

Appeal preferred by the defendants-respondents was however allowed by the learned Additional District Judge, Bhiwani, vide impugned judgement and decree dated 13.02.2013. It was specifically held that the plaintiff society is not proved to be the owner of the premises and the suit filed by the society was dismissed.

Aggrieved therefrom, the present appeal has been filed by the appellant-plaintiff society.

Learned counsel for the appellant vehemently argues that resolution Ex.P-3 shows that the land in question was handed over to the plaintiff for construction of a godown. Merely because the society is not reflected to be the owner in possession in the revenue records, the same cannot be held against the appellants. Reference has been made to various communications by the Superintendent of Police, Bhiwani (Ex.P-16) as well as communication by the Assistant Registrar Cooperative Societies, Bhiwani (Ex.P-17) to suggest that the plaintiff society was the owner of the property in question. It is submitted that even though the Gram Panchayat was not a party to the suit, the Panchayat has supported the case of the appellant-plaintiff. Reference is made to the statements of Mange Ram (PW-4), Daya Nand (PW-3) and Roshni (PW-6). It is thus prayed that the impugned judgement and decree dated 13.02.2013 passed by the learned Additional District Judge, Bhiwani, be set aside.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

The appellant-plaintiff claimed the relief of mandatory injunction directing the respondent-defendants to handover the vacant possession of the plots/godown as detailed in the plaint, where the Mundhal Police Post was set up. Appellant also asked for the use and occupation charges at the rate of ₹2000/- from January 2004 till the handing over of the possession. It was claimed that the property in question was owned by the plaintiff-society. Gram Panchayat Mundhal was stated to have sold the land to the plaintiff-society as per resolution Ex.P-3.

PW-6-Smt. Roshni wife of Ajmer, Sarpanch of Village Mundhal Khurd, deposed that the land in dispute was given to the Cooperative Society, 35 years ago, for construction of their office. The godown/office was duly constructed over the disputed property, but the same was handed over to police keeping in view the emergent situation. Gram Panchayat, it is deposed never handed over the suit land to the Police department, though it is stated by PW-6, that the police post was set up in 1984 with the consent of the Gram Panchayat.

The plaintiff society examined six witnesses to prove its case. Foundation of the entire case of the plaintiff society is based upon the document Ex.P-3, which is in Urdu and its Hindi translation Ex.PW3/A i.e. the resolution purportedly passed by the Sarpanch along with members of the Panchayat on 29.07.1961. As per resolution dated 29.07.1961 it is reflected that in the meeting between the Sarpanch and

the member Panchayat, it was decided that the Panchayat would give land measuring 120 x 80 feet for ₹220/- regarding construction of the godown for use of the society. It was further agreed that the Panchayat would afford more land to the society, if required and the land in question would not be used by the Panchayat for any purpose.

The learned First Appellate Court has rightly held that the land in question was given to the society for use of the land as a godown. Ex.P-3, is clearly not a document conferring ownership of the site in dispute upon the plaintiff society. Ex.DW1/B i.e. Jamabandi for the year 2003-04 reflects the suit land to be under the ownership of the Gram Panchayat, Mundhal Khurd and in the column of possession, it is mentioned '*Khud Kast*' (self cultivated) and '*Makbuja Malkan*'. There is no evidence on record to show that even the sum of ₹220/- was ever paid by the society to the Gram Panchayat and that too on account of transfer of the ownership rights of the property in question. No entries pursuant to the alleged transfer of the land were made in the revenue records. There is no registered instrument which was executed by the parties in respect to the purported sale of the property in question. Needless to say, Ex.P3/Ex.PW3/A and statement of PW-6-Roshni wife of Amar, Sarpanch of Gram Panchayat Mundhal cannot be termed sufficient to prove the ownership of the plaintiff society on land measuring 120 x 80 feet. There is indeed no evidence on record to reflect that the ownership of the property in question was ever conveyed to the plaintiff society by the Gram Panchayat in 1961. Jamabandi for the year 2003-04 Ex.PW1/B reflects the ownership of the Gram Panchayat over the suit property. It is

opposed to all probability that the society would not have taken any steps for necessary entries to be made from 1961 till 1984 in case the land was sold to it.

Learned counsel for the appellant sought to place reliance upon certain departmental communications to suggest that the police authorities were the licensee of the plaintiff society. However, there is no merit in the said averments which are totally unsubstantiated by the evidence on record. The said communications cannot in any manner confer title upon the appellant. Learned Additional District Judge, Bhiwani, has rightly set aside judgement and decree dated 12.05.2011, passed by the learned Civil Judge (Sr. Division), Bhiwani and dismissed the suit of the plaintiff society.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgment and decree dated 13.02.2013 passed by the learned Additional District Judge, Bhiwani, which warrants any interference by this Court.

It is relevant to note that there is delay of four (04) days in filing of this appeal and 1859 days in re-filing of this appeal.

Learned counsel for the applicant-appellant states that the appeal was filed within time i.e. on 18.05.2013 but the registry raised objection regarding the certified copy and court fee. The case was re-filed on 21.05.2013 after removing the objections but the Registry again raised

some objections. Counsel for the appellant asked the appellant to arrange the court fee and in the meantime Sh. Parkash Ram who was Clerk of the late Sh. Sanjiv Bansal Advocate, who had a common seat with the present advocate took the appeal from the registry on 31.05.2013 but mistakenly put the same in a brief of one of their decided case. As the summer holidays started from 01.06.2013 therefore the matter skipped the mind of counsel and his clerk.

It is further stated that after some time the counsel asked his the then clerk Vishal Singh about the case in hand but the file was not traceable. The Prabhandhak/Incharge of the appellant society was also changed. The concerned person could not be contacted by the counsel for the society. After the death of Sh. Sanjiv Bansal Advocate, when his family started weeding out the old & decided cases in the month of June 2018 then the present appeal was found in some old brief by the clerk Sh. Parkash Ram. In this manner the present appeal could not be refilled within time and delay of 1859 days occurred in the re-filing of the present case which is unintentional and *bona fide*.

In my considered opinion, there is no plausible explanation forthcoming to condone the huge delay of 1859 days in re-filing of the appeal. It is apparent that the appellant society was not at pains to even try and find out the fate of its appeal. In the facts and circumstances of the case, it cannot be said that delay in filing/re-filing of the appeal is unintentional, due to *bona fide* error or unavoidable circumstances beyond the control of the applicant-appellant. No ground is made out for condonation of the colossal delay.

No other argument has been raised.

Present appeal is, consequently, dismissed on merits as well as on account of delay in filing/re-filing of the appeal with no order as to cost.

14.08.2018

s.khan

**(LISA GILL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No