

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

RSA No.825 of 2017 (O&M)

Date of Decision.06.03.2018

Jogi Ram

.....Appellant

Vs

Gram Panchayat Village Mohangarh

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Navneet Jindal, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The appellant-plaintiff is in regular second appeal against the concurrent finding of fact whereby the suit claiming injunction against the Gram Panchayat restraining them from constructing metal street from the suit land belonging to the appellant-plaintiff had been dismissed by the trial Court, which has been upheld by the lower Appellate Court.

The appellant-plaintiff instituted the aforementioned suit on the ground that he is owner in possession of the suit land comprising in khasra No.321, 322 and 35//15/4 (gair mumkin) situated in village Mohangarh. On 18.6.1998, the aforementioned property was demarcated and on the basis of the demarcation, the plaintiff raised the boundary wall over khasra No.321 and 322 and constructed rooms. Even Sarpanch of the Gram Panchayat had also raised the boundary wall and unauthorizedly occupied the land belonging to the Gram Panchayat. It is in this background of the matter, the suit aforementioned was filed.

The suit was contested by the defendant by taking preliminary objections qua maintainability of the suit for want of notice under Section 205 of the Haryana Panchayati Raj Act, 1994. It was submitted that the

demarcation was done at the back of the Gram Panchayat wherein the defendant allegedly undertook not to metal the public street through the land of the plaintiff.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled for decree of permanent injunction as prayed and on the ground taken in the plaint?
OPP*
- 2. Whether the suit is not maintainable in the present form?
OPD*
- 3. Relief.”*

The plaintiff in order to support his case examined himself and brought on record jamabandi for the year 2008-2009 as Ex.P1, Aks Sizra Ex.P2. On the other hand, defendants examined Nafe Singh as DW1, DW3 Punjab Singh and tendered documents Ex.D1 to D3. The Courts below dismissed the suit on the following grounds:-

- (i) The plaintiff admitted that the Gram Panchayat was owner of the firmi land and the factum of metalling of the land.
- (ii) The demarcation was done in the absence of the member and the demarcation report had not been proved on record as it was of 1998.
- (iii) No notice under Section 205 of the Haryana Panchayati Raj Act was issued.

The appeal filed against the aforementioned judgment and decrees also met with the same fate.

Mr. Navneet Jindal, learned counsel appearing on behalf of the appellant submitted that along with appeal, a misc. application bearing

moved seeking permission of this Court to place on record Annexures A-1 to A-3 i.e. statement of witnesses Nafe Sigh in some other suit titled as “Karam Singh Vs. Gram Panchayat”, Jaipal Singh, Social Education and Panchayat Officer and judgment and decree dated 11.07.2014 in civil suit bearing No.109 of 2012 whereby in respect of the land of neighbour, injunction sought had been decreed and still holding field.

On merits, he submitted that the Courts below had erroneously dismissed the suit for want of notice under Section 205 of the Panchayati Raj Act whereas it is settled law that against any action taken by the defendant or anybody else without jurisdiction, there is no requirement of the notice as the Civil Court would have jurisdiction under Section 9 of the Code of Civil Procedure. The demarcation report is *per se* admissible as per the provisions of Order 6 Rule 10(2) CPC. The defendant has failed to rebut the aforementioned evidence, thus, there is illegality and perversity. In this eventuality, the Courts below ought to have looked into the contents of demarcation report. If the additional evidence and the submissions made herein above are read in conjunction, the judgments and decrees rendered by the Courts below are not sustainable.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Jindal. Though the finding of the Courts below for want of service of notice under Section 205 of the Haryana Panchayati Raj Act was not correct appreciation of law, in view of the ratio decidendi culled out by this Court in **Surender Kumar Vs. Gram Panchayat, Bariawas and others 2014(1) PLR 687** but the fact of the matter is that the plaintiff has failed to discharge the onus as per Section 101 of the Indian

Evidence Act. In the demarcation report of 1998, there is categorical admission that the same was conducted in the absence of the member of the Gram Panchayat. Though the suit was filed on 10.04.2012, much water has flown thereafter. The plaintiff was required to get the another demarcation done either during the pendency of the suit or immediately preceding to the filing of the suit on accrual of the cause of action.

The statement of Nafe Singh and other witness as sought to be placed on record by way of additional evidence would not be of any help, for, khasra numbers in the present suit as noticed above are different to the one in the aforementioned suit as the dispute therein was qua khasra Nos.35//17, 22/2/1, 22/1/2, thus, in my view, the appellant-plaintiff miserably failed to establish identity of the property with the judgment intended to be relied upon in support of the memorandum of appeal. The aforementioned evidence, in my view, thus, would not have any relevance for the adjudication of the *lis*, owing to the different property, therefore, application for additional evidence is dismissed.

In view of the aforementioned, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 06, 2018

Pankaj*

Whether reasoned/speaking Yes

Whether reportable No