

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

CR no.5328 of 2017 (O&M)

Date of Decision: 23.05.2019

Bharat Singh

...Petitioner

Vs.

Girraj and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Randhir S. Hooda, Advocate,
for the applicant-petitioner.
Mr. Surinder Dagar, Advocate,
for respondent no.2-Gram Panchayat.

Amol Rattan Singh, J (Oral)
CM no.11415-CII of 2019 and
CR no.5328 of 2017

By this application (CM no.11415-CII of 2019), the petitioner seeks to place on record certain documents to try and establish the connection of the suit land in the present *lis*, with the documents being a copy of the *Khasra Shikni Paimaish* of *Abadi* of Village Prithla, Tehsil Palwal, formerly District Gurgaon (now District Palwal).

The said application has in fact been filed pursuant to the order of this Court on the last date of hearing, i.e. 10.05.2019.

However, the application having been filed, in my opinion the previous order directing such documents to be placed on record passed by him would have been erroneous as if any observation is made by this Court on whether or not the land described in Annexure P-4 is the same as the suit land in the current *lis* (the suit in the current *lis* being one instituted by the petitioner herein seeking a decree of permanent injunction restraining respondent no.1 from interfering in his possession of that property), such

observation made by this court would naturally influence the merits of the case before the appellate court (as has passed the impugned order).

The impugned order (copy Annexure P-8) has been passed by the learned appellate court (District Judge, Palwal) on July 21, 2017, dismissing an application filed by the petitioner seeking that the Gram Panchayat of Village Prithla, be impleaded as respondent no.2 in that appeal, it being a necessary party.

Mr. Hooda, learned counsel for the petitioner, reiterates what he had submitted on the last date of hearing, to the effect that even though the Gram Panchayat was not a party to the suit instituted by the petitioner against respondent no.1 herein, yet a finding having been recorded by the trial court in the judgment in that suit, that the suit land being vacant land it would vest in the Gram Panchayat, even to try and dislodge that finding, the Gram Panchayat is a necessary party in the appeal, because otherwise any finding recorded even in favour of the petitioner by the appellate court and against the Gram Panchayat, naturally would be contested to be not binding on the Panchayat.

Learned counsel for respondent no.2, i.e. the Gram Panchayat, submits that the petitioner already having instituted another suit seeking a decree of permanent injunction against the Gram Panchayat restraining it from interfering in the possession of the suit property, the impugned order passed by the learned appellate court does not require to be interfered with, as the petitioner has already availed of his remedy against the Panchayat.

Learned counsel for the petitioner again reiterates that with a finding recorded in the judgment as is subject matter of appeal in the current *lis*, against the Gram Panchayat, naturally such finding cannot be dislodged in the second suit, which therefore would necessarily mean dismissal of the suit, thereby rendering the exercise of instituting it against the Gram Panchayat to be wholly futile.

Having considered the matter, I agree with the learned counsel for the petitioner to the extent that in view of the finding recorded by the trial court in its judgment as is subject matter of the appeal before the appellate court that has passed the impugned order, the Gram Panchayat is a necessary party in the appeal, for the reason that whatever finding is to be recorded by the appellate court as regards what has been held by the trial court in favour of the Gram Panchayat, it would only be binding on the Panchayat, (whether that finding is in favour or against it), if it is a party to the *lis*.

Consequently, this petition is allowed, with the impugned order set aside and the Gram Panchayat Village Prithla, Teshil and District Palwal, is ordered to be impleaded as a necessary party in the appeal pending before the learned District Judge, Palwal.

It is made clear that nothing observed by this Court while considering this petition or deciding it, would be treated to be an observation made by this Court on the merits of the case of either the petitioner or the respondents herein, which naturally would be considered

by the appellate court on the basis of the evidence led before the trial court or before it.

CM no.10508-CII of 2019

By this application, an interim direction is sought by the petitioner restraining the respondent-Gram Panchayat from “making any endeavour to raise construction over the land in dispute”.

The Gram Panchayat having been allowed to be impleaded as a party to the appeal before the first appellate court, it is considered appropriate that if the petitioner now files an application under Rule 5 of Order 41 and Rules 1 and 2 of Order 39 of the CPC before the appellate court, seeking any such interim injunction against the Gram Panchayat within 15 days, that application would be decided on merits very expeditiously by that court.

In the meanwhile, for a period of 15 days from today, the Gram Panchayat is restrained from raising any further construction on the disputed land, with it made clear that if such application is not filed within the aforesaid period by the petitioner, the interim order would automatically stand vacated from the date of expiry of that period, i.e. 15 days from today.

23.05.2019
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(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes