

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

Civil Revision No.7530 of 2015 (O&M)
Date of Decision: January 08, 2019

The Gram Panchayat of Village Balsamand

...Petitioner

Versus

Rameshwar

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Abhinav Aggarwal, Advocate,
for the petitioner.

Mr. Vijay S. Kajla, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

CM No. 2932-CII of 2018

Prayer in the application is to bring on record the legal representative of respondent Rameshwar, who is stated to have died on 07.05.2016.

Allowed subject to all just exceptions.

The persons mentioned in Para 2 of the application are impleaded as legal heirs of the respondent for the purpose of prosecuting the present case only.

CR No.7530 of 2015

The present civil revision is directed against the impugned order, whereby two-fold relief for proving the age of the son of the Sarpanch, non-compliance of the provisions of Order 5 Rule 15 CPC and

jamabandies for the years 1967-68 and 2007-08 as well as birth and school certificates, has been declined.

Mr. Ashish Aggarwal, learned Senior Counsel assisted by Mr. Abhinav Aggarwal, representing the petitioner submitted that the respondent-plaintiff instituted the suit claiming himself to be occupancy tenant in respect of suit land as per the provisions of Sections 3 and 5 of the Punjab Tenancy Act, 1887 and Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952. In the aforementioned suit, the Gram Panchayat arrayed as defendant was proceeded ex-parte on 18.03.2009 which resulted into ex-parte decree dated 03.11.2010. An application under Order 9 Rule 13 CPC was filed within three days of acquiring the knowledge, i.e., on 18.12.2010. The issues in the aforementioned application were framed on 11.10.2012 and the petitioner-defendant closed the evidence on 27.07.2013. At the stage of defendant's evidence, an application for permission to lead additional evidence to place on record documents to show that the son of the Sarpanch was a minor and, therefore, the service of minor was no service in terms of Order 5 Rule 15 CPC, but the same has erroneously been declined as there is no provision of additional evidence.

He further submitted that in order to arrive at a fair and just adjudication of the lis, particularly with regard to the nature of the relief sought by the plaintiff, the aforementioned piece of evidence is essential, much less the jamabandies which reflect the status of the plaintiff as proprietor instead of occupancy tenant.

Per contra, Mr. Vijay S. Kajla, learned counsel appearing on behalf of the respondent supported the impugned order and submitted that

the jamabandies would not be relevant for the adjudication of the lis in an application under Order 9 Rule 13 CPC, for, the focus of the court is only whether effected party, i.e., petitioner-defendant was properly served or not. In support of the aforementioned submission, relied upon the judgments rendered in **Chand Singh Versus Naranjan Singh and another, 1990(1) SimLJ 292** and **Salem Advocate Bar Association, Tamil Nadu Versus Union of India, 2005 (3) R.C.R. (Civil) 530.**

I have heard the learned counsel for the parties, appraised the paper book and of the view that the relief sought in the application is required to be allowed in part and not in toto, for, the issue involved in the present case is whether the Sarpanch of the petitioner-Gram Panchayat was served through male member or not. It is the case of the petitioner that the son was minor and, therefore, was not valid service as per the provisions of Order 5 Rule 15 CPC and in order to lend support to the aforementioned submission, even the school certificate is sought to be placed on record.

As regards the jamabandies with regard to the status of the proprietor is not the question to be decided in an application being a point of merit. No doubt, the petitioner-defendant had been negligent in not leading the evidence in affirmative in application under Order 9 Rule 13 CPC, but in order to prevent miscarriage of justice, the aforementioned piece of evidence, in my view, would be essential and necessary. There is no dispute to the ratio decidendi culled out in the judgments cited supra, but the facts of the present case, as noticed above, lead to an irresistible conclusion that such piece of evidence is essential and necessary as to whether the ex-parte judgment and decree was sustainable in the eyes of law.

Resultantly, the impugned order, in part, is set-aside. The petitioner- defendant is allowed to lead evidence in support of the age of the son of the Sarpanch and not with regard to the jamabandies sought to be placed on record, subject to payment of ₹ 75,000/- as costs to be paid to the respondent-plaintiff.

Revision petition stands disposed of.

January 08, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No