

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 951 of 1988 (O&M)

Date of decision : 29.5.2019

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Tek Chand and others

.....Appellants

vs.

Gram Panchayat, Rasulpur

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Parmod Sharma, Legal Aid Counsel, with
Mr. M.L. Sharma, Advocate for the appellants.

Mr. Mukesh Yadav, Advocate for the respondent.

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H. S. Madaan, J.

CM 2999-C-2015

Regular second appeal filed by appellants Tek Chand and others was dismissed for want of prosecution, vide order dated 3.12.2014, for the reason that there was no representation on behalf of the appellants on that date and on the earlier date i.e. 17.9.2014. Subsequently, an application seeking restoration of the appeal has been filed, which is opposed by learned counsel for the respondent.

However, I find that there are sufficient grounds to accept the application.

Therefore, the application is allowed and order dated

3.12.2014, is recalled and the appeal is restored at its original number.

The appeal is taken up for hearing.

RSA 951-1988

Briefly stated, facts of the case are that plaintiffs – Tek Chand, Shimbhu, Bishan Lal, sons of Sh. Rati Ram, residents of Rasulpur, had brought a suit against Gram Panchayat of their village, seeking a decree for permanent injunction, restraining the defendant from obstructing the plaintiffs from raising construction over the disputed site and not to dispossess them forcibly therefrom.

As per version of the plaintiffs, they are owners in possession of plot No. 93 measuring 0 kanal 6 marlas comprised in khewat No. 78, Khatoni no. 129, as per jamabandi for the year 1978-1979; that the plaintiffs have raised a chappar etc. in the said plot constructing a high wall on Northern and Eastern side thereof; that the plaintiffs have been using such property for tethering their animals. However, the defendant Gram Panchayat has been obstructing the plaintiffs from using such property, not listening to their request to desist from doing so, thereby giving rise to a cause of action to the plaintiffs to bring the present suit.

On being put to notice, the defendant appeared and filed a written statement contesting the suit, raising various legal objections to wit that the plaintiffs have no locus standi to bring the suit; that Civil Court does not have any jurisdiction to entertain and try the suit; that the suit is not maintainable in the present form; that ownership of the plaintiffs on plot No.93 was denied for want of knowledge. As per

case set up by the defendant, the plaintiffs have encroached upon the public passage comprised in Khasra No. 219 and 1/1 and to remove those encroachments, proceedings are pending before SDM, Mahendergarh. Demarcation was also carried out. Refuting the other allegations, the defendant prayed for dismissal of the suit.

The plaintiffs filed replication, controverting the allegations made in the written statement, whereas reiterating the averments made in the plaint.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiffs are owners as well in possession of the suit property? OPP
2. Whether the plaintiffs have made any encroachment in the thoroughfares as alleged in additional objection No. 2 in the written statement? OPD (objected to by the plaintiff)
3. Whether the civil court has no jurisdiction to entertain and try the present suit? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the defendant is entitled to special compensatory costs?
6. Relief.

Parties lead evidence in support of their respective claim.

After hearing the arguments, the trial Court, decided issue No. 1 in favour of the plaintiffs, issue No.2 was decided in favour of the defendant, issue No.3 was decided against the defendant, issue

No. 4 was decided in favour of the plaintiff and issue No.5 was decided against the defendant and in favour of the plaintiffs.

Resultantly, the suit of the plaintiffs was decreed and the defendant was restrained from interfering in peaceful possession of the plaintiffs over the disputed site comprised in Khasra No. 93. However, it was clarified that any findings given in the judgment would not effect the rights of the Gram Panchayat from removing encroachment from the land comprised in Khasra No. 219 and Khasra No. 1/1, since it has been finally decided by Assistant Collector Ist Grade, Mahendergarh, vide order dated 24.7.1982 that the plaintiff Tek Chand has encroached upon some portion of the land belonging to Gram Panchayat, comprised in Khasra No. 219 and Khasra No. 1/1, vide judgment and decree dated 23.11.1984.

The plaintiffs were still aggrieved by the judgment and decree passed by the trial Court and they preferred an appeal before the District Judge, Narnaul, which was assigned to Additional District Judge, Narnaul, who vide judgment and decree dated 14.11.1987 dismissed the appeal, upholding the judgment and decree passed by the trial Court, with the observation that in case the plaintiff-appellants were aggrieved by the order passed by Assistant Collector Ist Grade, they could have sought appropriate remedy under the Punjab Village Common Land Act.

The plaintiffs were still dissatisfied and they have knocked at the door of this Court by way of filing present Regular Second Appeal, notice of which was given to the defendant-Gram Panchayat, which has put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record.

I find that there is no merit in the appeal. The Courts below on appreciation of evidence adduced by the parties, in the light of the factual and legal position have arrived at the conclusion that plaintiffs are owners in possession of the land comprised in Khasra No. 93 measuring, 0 kanal 6 marlas, as per jamabandi for the year 1978-1979. It being so, the defendant could not possibly interfere in such possession of the plaintiffs over that piece of land. For that reason permanent injunction was granted in favour of the plaintiffs restraining the defendant Gram Panchayat from interfering in peaceful possession of the plaintiffs over the suit comprised in Khasra No. 93. However, as the things emerge, plaintiffs want to take possession of the adjoining site comprised in Khasra No. 219 and 1/1, vesting in the defendant Gram Panchayat, being used as a public passage. The plaintiffs can certainly be not permitted to do that. The Courts below have referred to order passed by the Assistant Collector Ist Grade, Mahendergarh, that plaintiff Tek Chand has encroached upon 2' x 15' of the land comprised in Khasra No. 219 and 6' x 10' towards North West over the land comprised in Khasra No. 1/1, belonging to the Gram Panchayat. The plaintiffs can certainly not get the Gram Panchayat restrained from getting that encroachment removed and seeking injunction in that regard against Gram Panchayat. Rather plaintiffs have tried to conceal material facts from the Court and they were not entitled to discretionary equitable relief of permanent injunction. Nevertheless, the courts below were quite

liberal and granted permanent injunction to them with regard to Khasra No. 93. the Gram Panchayat has every right to remove encroachment from the land belonging to it comprised in Khasra No. 219 and Khasra No. 1/1 and Courts below recognized that right of defendant Gram Panchayat.

The plaintiffs can certainly not feel aggrieved by such observations recorded by the Courts below. There is absolutely no merit in the present appeal.

The judgments and decrees judgment passed by the Courts below are well reasoned based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The concurrent findings recorded by the Courts below do not call for any interference.

No substantial question of law is involved in the present appeal. Accordingly, the same stands dismissed.

29.5.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No