

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

RSA No.3454 of 2010 (O&M)
Date of decision : 02.04.2019

Deep Kumar

...Appellant

Versus

Gram Panchayat Village Bohatwala through its Sarpanch

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. S.S. Duhan, Advocate for the appellant.

Mr. Ashok Kumar Sharma, Advocate for Gram Panchayat.

ANIL KSHETARPAL, J.

Plaintiff-appellant is in the Regular Second Appeal against the judgment passed by the learned First Appellate Court reversing the judgment of the trial Court.

Plaintiff filed a suit for recovery of compensation by affixing the court fee on tentative value of ₹10,000/- undertaking to pay the balance amount.

Question which needs consideration is “whether a lessor can refuse to compensate the lessee once it is found that the property i.e. agricultural land, leased out is deficient/less?”

Plaintiff undisputedly took on lease in a public auction the

land measuring 72 kanals for a sum of ₹50,000/-. The entire amount of lease money was paid. However, it is the case of the plaintiff that he was delivered possession of the land measuring 57 kanals 14 marlas as remaining was in unauthorized possession of Sube Singh and another. Plaintiff also claimed that he is entitled to further compensation as irrigation facility as promised was not provided.

Defendant-Gram Panchayat contested the suit and denied the allegations made in the plaint.

Before filing of the suit, plaintiff got the land demarcated and revenue official after demarcation in the presence of the members of the Panchayat found that the plaintiff is in possession of land measuring 57 kanals and 14 marlas of land and not in possession of land measuring 72 kanals. The report of the revenue official is Ex.P1 on the file. Plaintiff also filed a complaint to the Block Development and Panchayat Officer, in which some sort of investigation was carried out. However, the result of the aforesaid investigation is not part of the record. He also got served a notice calling upon the Panchayat to pay the amount.

Plaintiff in his evidence, appeared in witness-box whereas Sarpanch of the Gram Panchayat appeared in defence.

Learned trial Court on appreciation of evidence decreed the suit to the extent of ₹1,00,000/- whereas learned First Appellate Court has chosen to reverse the judgment of the trial Court and accept the appeal consequently dismiss the suit. The reasons recorded by the learned First Appellate Court are as under:-

- 1) Plaintiff has not ascertained the amount claimed in the suit. It was the duty of the plaintiff to file a suit for ascertained amount.
- 2) Plaintiff should have been beware and vigilant whether the Panchayat is in position to deliver the possession of the entire land sought to be leased out or not before participating in auction held for leasing out the land.
- 3) Khasra number of the land has not been given in the plaint.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

As regards first reason, the plaintiff had tentatively deposited the court fee on ₹10,000/-. Plaintiff had specifically mentioned that the amount of compensation claimed is not a fixed amount and the plaintiff will deposit the balance amount of court fee on the amount of compensation so adjudged by the Court. In such circumstances, keeping in view the status of the parties, the first Appellate Court should not have taken a narrow view.

As regards second reason, no doubt the lessee has to be beware but the lessor i.e. Gram Panchayat was also duty bound to ensure before inviting the villagers to participate in public auction for the purpose of leasing out the land analyze as to whether it would be in a position to put the lessee in possession. There is no dispute between the parties that the land is owned by the Gram Panchayat. However, it is the duty of the lessor to put the lessee in possession of the complete land leased. The

Gram Panchayat cannot wash of its hands. Some amount of duty lies on the shoulder of the Gram Panchayat-defendant.

As regards third reason, it may be noted that no doubt khasra numbers of the land have not been mentioned in the plaint, however, the Court has overlooked the fact that demarcation of the land was carried out and the plaintiff was found in possession of land measuring 57 kanals and 14 marlas. This fact is admitted by the Sarpanch when he appeared in evidence as DW1. Thus, it is obvious that the khasra numbers of the land were not in dispute. Hence, the First Appellate Court erred on this ground also.

Learned counsel for the appellant has further argued that the plaintiff could not get the possession of the tubewell and, therefore, failed to cultivate the land properly. He drew attention of the Court to the pleadings and evidence that the plaintiff had to spent extra amount of ₹20,000/- on purchase of water from some other person.

This Court has examined the evidence. Person from whom the water was purchased has not been named. He has also not been examined in evidence. No cogent evidence has been produced to prove that the plaintiff spent some amount on purchase of water. No doubt, the plaintiff has pleaded that the tubewell is in possession of Sube Singh and another, but for bald statement, no other evidence has been produced. Revenue official when visited the property for demarcation, his attention was also not drawn to this fact. In absence of the conclusive evidence on the purchase of water, suit filed for compensation cannot be decreed.

Accordingly, question of law which has been framed is answered in favour of the plaintiff. There shall be a decree for recovery of ₹10,000/- as approximately possession of 1/5th of the land leased out was not given. Total lease money was ₹50,000/-. Gram Panchayat shall be liable to pay the amount of ₹10,000/- alongwith interest @ 9% p.a. from the date of filing of the suit till realization.

In view of the above, Regular Second Appeal is partly accepted.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

02.04.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No