

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

RSA-1935-2011(O&M)

Date of decision:-19.3.2019

Gram Panchayat, Dungarwas

...Appellant

Versus

Krishan Lal and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.R.D. Yadav, Advocate
for the appellant.

Mr.Harsh Aggarwal, Advocate
for the respondents No.1 & 2.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiffs Krishan Lal and Harpal both sons of Sh.Balwan Singh, resident of village Dungarwas, Tehsil and District Rewari had brought a suit against defendants i.e. Collector, District Rewari and Gram Panchayat, Dungarwas through its Sarpanch craving for grant of permanent injunction restraining the defendants from creating nuisance by way

of collecting dirty water in the disputed property and for mandatory injunction directing the defendants to fill up the disputed pond with earth and in case the defendants succeed in collecting the dirty water during pendency of the suit, then defendants be directed to remove it therefrom.

According to the plaintiffs, they are owners in possession of land/plot comprised in Khewat No.209, Khatoni No.245, rectangle No.23, Kila NO.7/2(1-17) and Kila No.15/2/1(2-8) total land measuring 4 kanals 15 marlas shown in green colour in the site plan, attached with the plaint situated at village Dungarwas, Tehsil & District Rewari; that they have raised residential construction over their plot since long and are residing therein; that defendant No.2 Gram Panchayat having land adjacent to such residential property of plaintiffs comprised in Khewat No.319, Khatoni No.398, Rectangle No.23, Kila No.15/1 total measuring 2 kanals shown in red colour in the site plan attached, as per jamabandi for the year 2003-04; that the land is reserved and is being used for specific purpose of HADA RODI (a place for keeping carcasses of animals); that the purpose is so recorded in the jamabandi itself, however, defendant Gram Panchayat has got dug a deep pond in that land with an intention to create public nuisance since dirty water would accumulate in the said pond; that there is already a old *JOHAR* (pond) situated at a short distance from the disputed site; that the dirty water from the village

falls in the said pond; that the distance between the two places is 400 feet and the dirty water can be put by making a small channel connecting the old channel; that in case dirty water gets accumulated in the disputed site that may give rise to omission of foul-smell and breaking out of diseases of serious nature. According to the plaintiffs on refusal by the defendant Gram Panchayat to consider their claim, they knocked at the door of Court by filing civil suit. Before that the plaintiffs along with other residents of village had submitted a written representation to the Gram Panchayat to refrain from indulging in such illegal activities but in vain.

On notice, the defendants appeared and filed a joint written statement contesting the suit raising preliminary objections that no cause of action arose to the plaintiffs to file the suit; that the suit was not maintainable; that the plaintiffs were estopped by their own act and conduct; that the Court had no jurisdiction to entertain and try the said suit etc. On merits, it was contended that Gram Panchayat had full right to use the property in any way it liked; that the property which was already reserved for *HADA RODI*, a *NALA* had been constructed up to that property for disposal of the water; that the water of abadi cannot go towards *JOHAR* because it is at a long distance from abadi and is at height; that the plaintiffs had filed the suit on account of rivalry with the current Sarpanch in order to create hindrance in the development work of Gram Panchayat; that

the deadbodies of the animals are also being put in the property, which has now been reserved for *HADA RODI*. According to the defendants,, the Gram Panchayat had a right to use its land and plaintiffs are nobody to create hindrance in exist of the water. In the end, the defendants prayed for dismissal of the suit.

On the pleadings of the parties, following issued were framed:

1. Whether the plaintiff is entitled to decree of permanent injunction or in alternative for mandatory injunction against defendants on the grounds taken in the plaint? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
3. Whether the plaintiff has no locus-standi to file the present suit? OPD.
4. Whether the plaintiff is estopped by their own act and conduct to file the present suit? OPD.
5. Whether the plaintiff has no cause of action to file the present suit? OPD.
6. Whether this Court has no jurisdiction to try and entertain the present suit? OPD.
7. Relief.

Both the parties led evidence in respect of their claims.

During the course of their evidence, the plaintiffs had

examined Sh.Chand Singh, Lambardar as PW1, Sh.Krishan Lal as PW2 and Omparkash, Draughtsman as PW3.

On the other hand, the defendants examined Sh.Surender Kumar as DW1, Sh.Rajinder Singh as DW2, Sh.Suresh Kumar as DW3 and Sh.Hari Parshad as DW4.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 against the plaintiffs and in favour of the defendants, issues No.2 to 6 were not pressed and were decided accordingly. Resultantly, suit of the plaintiffs was dismissed with costs. This was so done vide judgment and decree dated 10.6.2010.

The plaintiffs were aggrieved by the said judgment and decree and they had filed an appeal before the Court of District Judge, Rewari, which was assigned to Additional District Judge, Rewari, who vide judgment and decree dated 23.12.2010 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiffs passing a decree for permanent injunction restraining the defendants from creating any nuisance by way of collecting the dirty water or digging pond in the land which is meant for a particular purpose and vests in the Gram Panchayat further issuing a decree of mandatory injunction directing the defendants to fill up the disputed pond with earth at their own cost and in case the defendants succeed in collecting the dirty water during pendency of the suit, then the same be removed.

Now it was turn of the defendant to feel dissatisfied and it had filed the present regular second appeal before this Court, notice of which was issued to the respondents/plaintiffs, who appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the appeal.

It comes out that the trial Court had not appreciated the legal and factual position properly, which had resulted in dismissal of the suit, however, learned Additional District Judge, Rewari is shown to have analysed the evidence in a proper and appropriate manner in light of the law on the subject considering the facts and circumstances of the case while coming to the conclusion that the land adjacent to the property of plaintiffs belong to village Gram Panchayat but its purpose has been recorded to be for *HADA RODI* and this purpose cannot be changed without getting necessary permission from the competent authorities. Therefore, a pond cannot be allowed to be dug up in the said land when a particular place has been earmarked as a pond for putting the dirty water. I do not see any reason to disagree with the First Appellate Court in that regard.

Learned counsel for the respondents/plaintiffs referred to authority **Baljinder Singh and others Versus State of Haryana and others, 2012(5) RCR(Civil) 294** by a Co-ordinate Bench of this Court wherein it was observed that user of land vesting in Gram

Panchayat cannot be changed without resorting to the procedure prescribed under the Act/Rules. Admittedly no such permission has been obtained by the village Gram Panchayat from the competent authority by adopting due procedure. Therefore, without doing so, the site earmarked for *HADA RODI* cannot be changed into pond.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Rewari.

The appeal stands dismissed accordingly.

19.3.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No