

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

CR-2341-2017 (O&M)

Date of decision: 17.08.2022

Gram Panchayat, Village Sattowali

....Petitioner

Versus

Sampuran Kaur

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms.Kiran Verma, Advocate for the petitioner

Mr. S.S.Deol, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

The Gram Panchayat of Village Sattowali assails the correctness of the order passed by the trial court on 13.12.2016, while dismissing an application under Order IX Rule 13 of the Code of the Civil Procedure, 1908 to set aside ex parte judgment and decree dated 21.11.2008.

Some facts are required to be noticed. Respondent-Sampuran Kaur filed a suit for grant of decree of permanent injunction restraining the Panchayat and its representatives from interfering in her peaceful possession of 1 kanal and 10 marlas comprised in Khewat No.130 Khatauni No.144 Khasra No.23. The plaintiff claims that the property in khasra no.24 is owned by the Punjab Wakf Board and her husband Sarwan Singh has taken the same on lease from the Punjab Wakf Board whereas the property comprised in khasra no.23 was claimed to be Abadi deh (residential area) and the plaintiff and her husband remained in possession since the partition of the country in the

year 1947. The defendant while filing the written statement claims that the property comprised in khasra no.24 is owned by the Punjab Wakf Board, however, the property comprised in khasra no.23 is in the Abadi of the village (residential area) and vests with the Gram Panchayat for maintenance and development of the village. It was also asserted that an order of eviction of Sarwan Singh was passed by the District Development and Panchayat Officer on 13.10.1983 and the Panchayat is taking possession as per the aforesaid order of eviction. However, unfortunately, the Sarpanch stopped appearing in the court, resulting in a decree passed by the trial court. The operative part of the ex parte judgment dated 21.11.2008 reads as under:-

“15. In view of my findings on the aforesaid issues the suit of the plaintiff succeeds and is decreed with costs whereby defendants are restrained from interfering in the peaceful possession of plaintiff over the suit land and from dispossessing her illegality and forcibly in due course of law. Decree sheet be prepared accordingly. File be consigned to Record Room.”

After the elections, newly elected representatives of the Management of the Gram Panchayat took over and filed an application for setting aside an ex parte decree, which has been dismissed by the trial court.

The court has held that the Panchayat was aware of the pendency of the suit but it did not defend the suit diligently.

The trial court has also failed to notice that the order passed by District Development and Panchayat Officer, Jalandhar, while exercising the powers of Collector is also with respect to the land

comprised in khasra no.23 and is confined only to khasra no.24.

The Panchayat claims the property to be Shamlat deh which is for the common use of all the residents of the village. In the present case, Punjab Wakf Board has also not been impleaded as a party. Moreover, the jurisdiction of the civil court to decide whether any property or any right or interest in any property is or is not for shamlat deh is excluded in view of Section 13 of the Punjab Village Common Land Regulation Act, 1961. In the present case, the first question which requires determination is “As to whether the suit property is or is not part of Shamlat deh?”

Keeping in view the aforesaid facts, the ex parte judgment and decree dated 21.11.2008 is set aside. Let the trial court re-decide the suit after granting opportunity to the Panchayat to defend the suit. The parties through their counsel are directed to appear before the trial court on 05.09.2022.

Disposed of.

All the pending miscellaneous applications, if any, are also disposed of.

17.08.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE