

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4582 of 2017 (O&M)
Date of decision: 15.11.2022

Sunil Dutt and others

..Appellants

Versus

Biswedarans of village Singhpura through proprietors

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Sr. Advocate
with Mr. Dhruv Mittal, Advocate
for appellant no.1 and 2.

Mr. Sunil Chadha, Sr. Advocate, with
Mr. Saurav Kanojia, Advocate
for appellant no.3.

Mr. Abhinav Sood, Advocate, for
Mr. Vikram Singh, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.**

2. While assailing the concurrent findings of fact arrived at by the courts below, the defendants have filed the present regular second appeal. The relevant facts, in brief, are required to be noticed.

3. As per the revenue record, the predecessors of the defendants were allowed to occupy land measuring 30 Kanals and 8 Marlas (which is now 28 Kanals and 18 Marlas) as a licensee for performing religious

ceremonies in the village. The defendants are 'Brahmins'. The predecessors of defendants, in order to grab the ownership of the property, filed a suit against the Gram Sabha of the village, Singhapura through its Lambardars (Headmen). In that suit, their claim was conceded by the Lambardars and therefore, a decree was passed wherein, predecessor in interest of the defendants were declared the owners in possession on 01.04.1977. In the present case, the plaintiffs (respondents herein) claiming to be a body of proprietors of the village, filed the suit in a representative capacity under Order I Rule 8 CPC, with the following prayers:-

“ It is, therefore, prayed that a decree for declaration may kindly be passed with costs in favour of the plaintiffs and against the defendants that judgment and decree dated 01.04.1977 passed in Civil Suit No.63 of 08.03.1977 captioned Smt. Chander Pati vs. Gram Sabha etc. in respect of the suit land and consequent mutation NO.990 dated 08.08.1977 and all subsequent jamabandies are null and void and not binding on the rights of the plaintiffs in the suit land and for permanent injunction restraining the defendants from changing the nature of the suit land, by converting the same into plots and colony or by raising any permanent construction on the same and from alienating the same in any manner including by way of sale mortgage, gift, exchange, release and lease etc. Any other relief to which the plaintiffs are found entitled in the facts and circumstances of the case may also be granted, in the

interest of justice.”

4. It was alleged that the Civil Court decree dated 01.04.1977 is collusive and has been passed without impleading the necessary parties. While contesting the suit, the defendants no.1 to 3 filed their written statement claiming that they were never inducted as licencees in the suit land but they are owners in possession of the suit land more or less, since 1944. However, it was stated that the suit was given to their predecessors in lieu of performing religious ceremonies.

5. After granting various opportunities to the parties to lead evidence, both the courts have decreed the suit.

6. The trial Court, during the pendency of the suit, nominated a Local Commissioner, who reported that now, the entire land has been covered with houses and shops built by various persons including strangers. Thus, both the courts decreed the suit while declaring that the collusive judgment and decree dated 01.04.1977 is not binding on the rights of the proprietors/plaintiffs.

7. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book, the judgments and decrees passed by the courts below as well as the requisitioned record.

8. The appellants are represented by two senior counsels. They have submitted that the suit under Order 1 Rule 8 CPC was not maintainable as the list of Biswedarans was not filed. Moreover, the Civil Court has no jurisdiction in view of the bar under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana). Additionally, although the plaintiffs claim that the property is

“Shamilat Deh”, however, the Gram Panchayat has not been impleaded as a party. They rely upon the judgment passed in *Sahabuddin vs. Ali Mohammad and others* (RSA-2068 of 2013, decided on 08.07.2022) and other similar judgments.

9. On the other hand, the learned counsel representing the respondent contends that the advocates representing the plaintiffs and the defendants in the previous suit have been examined in the evidence in this suit. They have admitted that there was no resolution of the Gram Sabha permitting the headman (Lambardar) of the village to concede to the claim of the defendants (the plaintiffs in the previous suit).

10. This Court has analyzed the arguments of the learned counsels, the judgment of the lower courts as well as the requisitioned record.

11. As regards the first argument of the learned senior counsel representing the appellants, it may be noted that neither there is any issue nor any discussion before the trial Court on the objections taken by the learned senior counsel. The list of persons, who the plaintiffs are representing is only for the knowledge and satisfaction of the Court. The First Appellate Court has concluded that filing of such list would be deemed to have been exempted. In my considered view, such objection, which does not effect the merits of the case, should not be permitted to be taken at this stage in order to defeat meritorious claim of the plaintiffs.

12. As regard the second argument with regard to lack of jurisdiction, it may be noted that there is no issue with regard to title or vesting of the property in the Gram Panchayat. In fact, the parties have contested before the courts below on the following issues culled out by the trial Court:-

1. *Whether the plaintiff is entitled a decree for declaration on the grounds mentioned in the plaint?OPP*
2. *Whether the plaintiff is entitled to decree for permanent injunction as prayed for?OPP*
3. *Whether the suit is not maintainable in the present form?OPD*
4. *Whether the plaintiff has no cause of action and locus standi to file the present suit?OPD*
5. *Whether the suit of the plaintiff is time barred?OPD*
6. *Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD*
7. *Whether suit is bad for non-joinder of the necessary parties?OPD*
8. *Relief.”*

13. It is not the case of the defendants that they were inducted by the Gram Panchayat after passing a resolution in any meeting. The Gram Panchayat is a body corporate which represents the residents of the village. The Gram Panchayat was required to perform its functions in accordance with the provisions of the Act. Moreover, even the Gram Panchayat was not properly impleaded as party in the previous suit. As per the Haryana Panchayati Raj Act, 1994, the Gram Sabha is a name given to the meeting of all the residents of the village. However, it is not a body corporate. In other words, whenever a meeting of all the residents of the village is required to be called, then, it is referred to as meeting of the Gram Sabha. Moreover, the Lambardars/headmen are not authorized to represent either the Gram Panchayat or the Gram Sabha. Thus, the decree dated 01.04.1977 is not

even worth the paper on which it is written.

14. Similarly, the next objection of the learned senior counsel that on account of non-impleadment of the Gram Panchayat, the suit is liable to be dismissed, is also without substance because the aforesaid issue does not arise in this litigation. The issues culled out by the trial Court has already been extracted above. It is evident that the aforesaid objection was never debated before the courts below.

15. As regards the objection of the learned senior counsel with reference to the judgment passed in Sahabuddin's case (supra), it may be noted that in the aforesaid case, the question of vesting of the property in the panchayat was required to be decided. This issue does not arise in the present case. Hence, the aforesaid judgment is not applicable.

16. Keeping in view the aforesaid discussion, this court does not find it appropriate to interfere with the concurrent findings of fact arrived at by the Courts below.

17. Dismissed.

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

November 15, 2022

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No