

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

CWP-1654-1996 (O&M)
Reserved on: 30.01.2023
Date of decision: 10.02.2023

SOHAN LAL (DECEASED) THROUGH HIS LRs

...Petitioner

Versus

COMMISSIONER, FEROZEPUR DIVISION, FEROZEPUR AND ORS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Ms. Gauri Handa, Advocate and
Ms. Mehr Singh, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab

Mr. Harpal Singh, Advocate
for respondents No.2 and 3.

SURESHWAR THAKUR, J.

1. The Gram Panchayat Sardarpura, Tehsil Fazilka, District Ferozepur through its Sarpanch one, Jagdish Singh instituted case No.987/DDPO in the Court of District Development and Panchayat Officer, Ferozepur (authorized Collector under the Punjab Public Premises and Lands (Eviction and Recovery) Act, 1973 (hereinafter referred to as the “Act of 1973”). The above case was cast under the provisions of Sections 4, 5, and 7 of Act of 1973, therein it was claimed, that since the respondent therein, was in unauthorized possession of the land comprised in Khasra No.170(2-8). Therefore, an order for his eviction was prayed to be made. The learned Collector concerned, through a verdict carried in Annexure P-5, made an order of eviction against the respondent therein. The

reason for his making the said order became rested on the factum, that the revenue entry describes the petition lands as a *Hadda Rori* or in other words the petition land(s) being reserved for the keeping thereons of carcasses of the livestock of the villagers. Therefore, it became concluded, that the lands with the above description, became vested in the *Panchayat Deh*, and, that the respondent therein had no right, title or interest over the petition lands.

2. The aggrieved therefrom one Sohan Lal preferred an appeal thereagainst before the Competent Appellate Court. To the said appeal, appeal No.PP-92 of 1991 became assigned. Through a decision made thereons, on 27.09.1994, the learned Appellate Court declined to make any interference with the order, as became initially rendered by the learned Collector concerned, and, as becomes carried in Annexure P-5.

3. Therefore, the petitioner herein is pained from the concurrently made orders against him by both the Authorities below, and, is led to institute thereagainst the instant petition before this Court.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

4. The learned counsel for the petitioner has contended with much vigor before this Court, that since prior to the institution of the above petition before the learned Collector concerned, the Gram Panchayat concerned, had instituted a similar petition, against the petitioner herein, hence containing a cause of action, similar to the one in the instant petition, and, also when the khasra numbers in the earlier petitions are similar to the khasra numbers in the instant petition, besides when in both, the parties are similar. Moreover, when as revealed by Annexure P-2, annexure whereof, is the statement of the learned counsel, for the Gram Panchayat concerned, one, Shri D.N. Saajan, as the said counsel, is disclosed in Annexure P-4, to be engaged by the Gram Panchayat

concerned, for defending in the relevant motions qua hence the said petition becoming permitted to be withdrawn. In addition, he also reiteratedly submits, that since a perusal of the said statement, as made by the learned counsel for the Gram Panchayat concerned, before the learned Collector concerned, statement whereof becomes extracted hereinafter, unfolds, that the learned counsel concerned, did in consequence thereof, but receive an affirmative order. Therefore, when relevant permission became granted to the Gram Panchayat concerned, to exclude the suit khasra numbers from the earlier petition, thereupon when the claim raised, in the earlier petition rather was in respect of those khasra numbers, similar to even the khasra numbers in instant petition, but, yet with the said part suit claim becoming permitted to be simpliciter abandoned, and, also becoming permitted to be simpliciter withdrawn.

*“Statement of Shri D.N. Saajan, Advocate of Appellant on oath.
Stated that permission of filing application for remaining land to village Panchayat be given after excluding Khasra No.170(2K-8M). On this condition the suit be consigned to office.”*

5. Therefore, he consequently submits, that since the above withdrawal or abandonment, was a simpliciter withdrawal of the suit claim qua the extant khasra numbers, and, but obviously without leave to re-institute a petition afresh, especially *qua* the very same khasra numbers. Resultantly, he argues that since the mandate encapsulated in Order 23 Rules 3 and 4 of the CPC, provisions whereof stands extracted hereinafter, become infringed, inasmuch as, when only within the ambit of sub Rule 3 of Order 23 of CPC, the suit or part of the suit claim is permitted to be withdrawn by the learned Civil Judge concerned, but with liberty to institute a fresh suit, on the same subject matter or in respect of such earlier abandoned part of suit claim, thereupon alone it was permissible for the Gram Panchayat concerned, to re-institute against the present petitioner, a petition with a similar relief, and/or, with respect to the present petition khasra numbers. Thus the apposite statutory embargo created by

sub Rule 4 of Order 23 of CPC, did visibly becoming attracted against the Gram Panchayat concerned, against its re-instituting a fresh petition *qua* an earlier simpliciter abandoned part cause of action *qua* the petitioner.

“Order XXIII WITHDRAWAL AND ADJUSTMENT OF SUITS

1. Withdrawal of suit or abandonment of part of claim.-(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in Rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.”

ANALYSIS OF THE SUBMISSIONS

6. The above made submission is meritorious, and, is required to be upheld by this Court. The reason for upholding the said argument, is but simple inasmuch as, it becomes supported, both from a reading of statement hereinabove, as, recorded before the learned Collector concerned, besides from application thereto of the apposite statutory mandate (supra). The statement (supra) did lead to the granting of the asked for leave to the Gram Panchayat concerned, to make a simpliciter withdrawal of the earlier motion, and, but obviously without further leave being granted to re-institute the earlier abandoned part of suit claim, as and when the occasion arises. Since obviously the earlier abandoned suit claim, was a simpliciter abandonment, but without leave to re-institute it afresh, thereupon rather than the mandate of sub Rule 4 of Order 23 being attracted, contrarily, the mandate of sub Rule 3 of Order 23(1) became attracted. Resultantly, there was no occasion for the Authorities below, to yet proceed to entertain a freshly instituted petition, against the petitioner in respect of the present khasra numbers, especially when even in respect of the instant khasra numbers, rather the earlier claim became abandoned, and, that too without leave being granted to re-institute the earlier simpliciter partly abandoned claim.

7. The effect of the above conclusion, is that, since the subsequent motion was completely hit by the above statutory bar, thereupon the exercise of jurisdiction by the Authorities below, on the subsequent mis-constituted motion, was completely in excess of the jurisdiction bestowed upon them, besides the orders as made concurrently, upon the relevant motions, are also completely vitiated besides are flawed.

FURTHER SUBMISSION OF THE LEARNED COUNSEL FOR THE PETITIONER

8. Apart from the above, it appears on a reading of Annexure P-1 appended to the petition, that though echoings occur therein, that the petitioner is in possession of the petition khasra numbers, since the conclusion of the consolidation operations, but yet a revenue entry of *Hadda Rori*, is existing with respect to the petition lands. However, it has been further echoed therein, that for a prolonged period of time, the said place is not being used as a *Hadda Rori*, and that it is a mere paper entry. Therefore, *prima-facie* it appears, that both the Authorities, have assigned credence to mere a paper entry, ignoring completely and also overlooking, the above echoings carried in Annexure P-1, echoings whereof appear, to comprise cogent evidence to bely the worth, if any, of a stray entry in the revenue records hence reflecting the petition lands to be a *Hadda Rori*. Since none of the members of the village proprietary body came forward, since the conclusion of the consolidation operations nor did come forth to raise any claim that the petitioner was resisting their efforts to stack on the said *Hadda Rori*, the carcasses of their dead livestock, thereupon, it has to be concluded, that as a matter of fact, the said revenue entry was and/or is a stray entry. Moreover, it has also to be concluded, that the apposite cogent rebuttal evidence, as comprised in Annexure P-1, qua the mere paper entry, does get immensely fortified, from the factum, qua no member of the village proprietary body, since the occurrence of the above echoings, in the revenue record, rather coming forward with a grievance, that the petitioner was resisting their attempts to stack on the petition lands the carcasses of their dead livestock.

CONCLUSION

9. The conclusion to be drawn from the above discussions, is that, the subsequently made petition, was completely barred by the principle of *res*

judicata, as enshrined in sub Rule 4 of Order 23(1) of CPC. Moreover, it has also to be concluded, that the revenue entry of *Hadda Rori*, as made in respect of the petition land was or is but a mere paper entry. Furthermore, it has to be also concluded, that the presumption of truth as assignable to the said entry, becomes completely overcome by the echoing (*supra*), as carried in Annexure P-1.

SUMMARIZATION OF PRINCIPLES

I. The principle of *res judicata*, is applicable to a subsequent case, when the lawful decision, as made on the previous petition, is, between the same parties, and/or, is with respect to a similar relief or is *qua* the same subject matter, as reared in the subsequent petition. Even if the lawful decision made on the earlier petition, does cover all the above apposite similarities, but is merely a simpliciter withdrawal of the claim against the defendants, thereupon, the subsequent suit, is hit by sub Rule 4 of Order 23(1) of CPC.

II. A mere paper entry of '*Shamlat Deh*' in revenue records, does not make any land to vest in Gram Panchayat nor petition lands can be deemed to be used for a common purpose, unless there is cogent evidence to support the fact, that the said revenue entry is lawfully made, and/or, if the presumption of truth attachable to the apposite revenue entry, does become evidently dislodged, by adduction of cogent rebuttal evidence.

III. If the entry of '*Shamlat Deh*' or the revenue entry of *Hadda Rori*, is existing in the revenue entries but its worth is

belied by adduction of cogent evidence, thereupon the said revenue entry becomes a mere paper entry.

FINAL ORDER

10. In view of the above, this Court, is of the firm opinion, that both the Authorities below, have in a post haste manner, and, without bearing in mind, the above trite facts, have proceeded to in a most slipshod, perfunctory and mechanical manner, hence allow the ill constituted subsequent motion of the Gram Panchayat concerned. Resultantly, gross miscarriage of justice has been done. The above is required to be undone. In consequence, the instant writ petition is allowed, and, the impugned orders are quashed and set aside, with costs of Rs.25,000/-, to be forthwith deposited by the Gram Panchayat concerned, with the Treasurer of the Punjab and Haryana High Court Bar Association, Chandigarh.

(SURESHWAR THAKUR)
JUDGE

10.02.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

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