

[108] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM Nos.1174-76-C-2023 and
RSA No.319 -2023 (O&M)

Date of Decision : 25.04.2023

BhagwanBalmiki Mandir Committee
Village Batriana

...Appellant

versus

Gram Panchayat Village Batriana and Ors.

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Rajesh Duhan, Advocate (Legal Aid Counsel) for the
applicant/appellant.

B.S. Walia, J. (Oral)

CM No.1176-C-2023

For the reasons as are mentioned in the application, the same is allowed. Delay of 102 days in late filing of the appeal is condoned.

CM No.1175-C-2023

For the reasons as are mentioned in the application, the same is allowed. Delay of 26 days in late re-filing of the appeal is condoned.

CM No.1174-C-2023

Allowed as prayed for.

Main Case

[1] Challenge in the Regular Second Appeal is to the
judgment and decree dated 21.05.2022 passed by the learned

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[2]

Additional District Judge, Sangrur dismissing civil appeal No. CA/CIS No.22 of 2021 and upholding the judgment and decree dated 13.01.2021 passed by the learned Additional Civil Judge (Sr. Div.), Sangrur in Civil Suit No. 582 dated 28.09.2018 in case titled as Bhagwan Balmiki Mandir Committee, Village Batriana, Tehsil and District Sangrur through its President/Caretaker vs. Gram Panchayat Village Batriana, Tehsil and District Sangrur and others dismissing the suit of the plaintiff/appellant.

[2] Learned counsel contends that the Courts below have not appreciated the evidence in the correct perspective, besides, did not frame any issue, therefore, the impugned judgment and decree dated 28.09.2018 and 21.05.2022 are liable to be reversed and the civil suit filed by the plaintiff/appellant decreed.

[3] I have considered the submissions of learned counsel.

[4] A perusal of the paper-book reveals that suit was filed by the plaintiff/appellant for permanent prohibitory injunction for restraining the respondents/defendants, their agents, representatives and associates from dispossessing, making any kind of construction and interfering in any manner in the peaceful possession of the plaintiff/appellant over land measuring 20 Biswas comprised in Khewat No.509/466, Kahtauni No.819, Khasra No.315 (5-15), 316 (2-16) recorded as *Banjar Zameen* situated in the revenue estate of

Village Batriana, Tehsil and District Sangrur as per Jamabandi for

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the year 2011-12 shown as Mark ABCD in the site plan. The respondents / defendants were proceeded ex parte.

[5] Learned trial Court took into account that the plaintiff/appellant had examined himself as PW-1 and reiterated the averments made in the plaint on oath and had also proved copy of Registration Certificate of Committee as Ex.P-1, copy of Resolution dated 25.09.2018 as Ex.P-2, copy of Certificate issued by Gram Panchayat village Batriana regarding giving 20 Biswas of land to the plaintiff/appellant Committee as Ex.P-3, list of members as Ex.P-3/A, copy of Jamabandi for the year 2011-12 as Ex.P-4, site plan Ex.P-5, copy of application moved to the Chief Minister, Punjab as Ex.P-6, copy of application moved to the Director, Panchayat Department, Punjab as Ex.P-7, postal receipts as Ex.P-8 to Ex.P-10, copy of application dated 26.09.2018 moved to the SHO, Police Station Bhawanigarh as Ex.P-11 and photographs as Ex.P-12 to Ex.P-27, besides, had examined Lakha Singh, member of the plaintiff/appellant Committee as PW-2 who proved copy of Registration Certificate of Committee as Ex.P-1, copy of Resolution dated 25.09.2018 as Ex.P-2 and identified his signatures on the same, besides, plaintiff/appellant had examined Gurjant Singh, Photographer as PW-3 who proved the photographs of suit land as Ex.P-12 to Ex.P-27 and Pritam Singh was examined as PW-4 who proved the original site plan as Ex.P5 and identified his signature on the same. The learned trial Court on the basis of evidence led by the

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plaintiff/appellant held that the plaintiff/appellant had claimed that the Gram Panchayat had allotted suit land to him for construction of Mandir for which he had produced certificate issued by the Gram Panchayat as Ex.P3. However, the learned trial Court came to the conclusion that the said certificate did not bear the signatures of all the members of the Gram Panchayat, besides, the plaintiff/appellant had also failed to prove the document as per the Indian Evidence Act as no witness of the document had been examined by the plaintiff/appellant. Further the plaintiff/appellant had produced copy of Jamabandi for the year 2011-12 but the document clearly showed that it was the Gram Panchayat which was the owner and in possession of the suit land. Learned trial Court further held that the other documents produced by the plaintiff/appellant did not show the plaintiff/appellant to be the owner and in possession of the suit land nor any other document had been produced by the plaintiff/appellant to show the allotment of the suit land by the Gram Panchayat, the site plan and the photographs produced by the plaintiff/appellant did not prove the ownership of the plaintiff/appellant over the suit land, besides, even as per the Jamabandi for the year 2011-12, the Gram Panchayat of the village was owner in possession of the suit land and there was nothing on record to show that the plaintiff/appellant had any right or title over the said suit land and on the basis of the same held that it was settled law that no injunction could be granted against the true owner and since as per the record, Gram Panchayat

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i.e. respondent/defendant No.1 was recorded as owner of the suit land, therefore, no injunction could be granted against the Gram Panchayat. Besides, since, the appellant/plaintiff had failed to produce any document to prove that the Gram Panchayat had allotted the suit land to it and it was the owner in possession of the same, therefore, plaintiff/appellant had failed to prove his case. Accordingly, in the light of the position noted above, the learned trial Court dismissed the suit.

[6] Appeal filed by the plaintiff/appellant met with the same fate as the learned Appellate Court also recorded that plaintiff/appellant had miserably failed to prove lawful possession over the suit property and the certificate Ex.P3 relied upon by the plaintiff/appellant as issued by the Gram Panchayat of Village Batriana to the effect that 20 Biswas of land had been given to the plaintiff/appellant, had not been proved by its executor. Furthermore, it was not in the shape of a Resolution passed by the Panchayat and the certificate issued by the Sarpanch was of no value as the land in question was not his personal land that he could give the same to anyone by his own sweet will without following due procedure such as passing of a Resolution and getting such Resolution approved from the concerned Government Department/Authority. The learned Appellate Court further held that in the revenue record there was no entry regarding possession of the plaintiff/appellant over any part of the suit land and the evidence

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brought on record by the plaintiff/appellant himself was contradictory as in the plaint it was claimed that plaintiff was in possession of 20 Biswas of land whereas in the letter written by the plaintiff to the Director Panchayat Department (Punjab) Ex.P7, claim was that plaintiff was in possession of only 2 Biswas of land. Learned Appellate Court further held that no injunction could be granted against the true owner i.e. Gram Panchayat moreso when the plaintiff/appellant had miserably failed to prove his possession over 20 Biswas of land. In the light of the position noted above, the learned Appellate Court dismissed the appeal.

[7] Learned counsel for the appellant apart from reiterating the fact that the learned Courts below had not appreciated the evidence in the correct manner contended that the trial Court had not framed issues, therefore, the impugned judgment(s) and decree(s) were liable to be set aside and the matter remanded to the learned trial Court for fresh decision after framing issues.

[8] I have considered the submissions of learned counsel and with his able assistance have perused the record but am afraid that the submissions of learned counsel for the appellant are devoid of merit in view of the decision of Hon'ble the Supreme Court in **Ramesh Chand Ardawatiya vs. Anil Panjwani**, Law Finder Doc ID # 36051 (SC) decided on 05.05.2003 as per which in a case where the defendants were proceeded ex parte, the Court is not bound to

frame issues under Order 14 CPC and deliver the judgment on every

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issue as required by Order 20 Rule 5 CPC although the trial Court is required to scrutinize the available pleadings and documents, consider the evidence adduced and do well to frame the points for determination and proceed to construct the ex parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the Court shall not admit evidence, the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence. Relevant extract of the decision of Hon'ble the Supreme Court in Ramesh ChandArdawatiya's case (Supra) is reproduced as under:-

“33. So far as the plea of bar as to maintainability of suit for failure to seek further relief is concerned, we cannot find fault with the plaint as framed. The defendant was alleged to be a rank trespasser who was in the process of committing a trespass and was allegedly raising unauthorized construction over the property neither owned nor legally possessed by him. The relief of specific performance is not a further relief to which the plaintiff is entitled or which he could have sought for against this defendant. Thus, from the point of view of the present defendant, we cannot find any such defect or infirmity in the relief sought for by the plaintiff as would render the suit not maintainable and liable to be thrown out at the threshold. But there is substance in the other limb of this submission made by the learned senior counsel for the defendant-appellant. Even if the suit proceeds ex-parte and in the absence of a written statement, unless the applicability of Order VIII Rule 10 of the CPC is attracted and the Court acts thereunder, the

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necessity of proof by the plaintiff of his case to the satisfaction of the Court cannot be dispensed with. In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the Court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex-parte the Court is not bound to frame issues under Order XIV and deliver the judgment on every issue as required by Order XX Rule 5. Yet the Trial Court would scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the 'point for determination' and proceed to construct the ex-parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the Court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence."

besides, Co-ordinate Benches of this Court in **M/s Karvy Consultants Limited vs. Umesh Jain and others**, Law Finder Doc ID #390397, **M/s Mahindra & Mahindra Finance India Ltd. Vs. Dharampal& another**, Law Finder Doc ID #441602 and **Anil Sekhri and another vs. AyushSekhri and another**, Law Finder Doc Id #921258 decided on 01.02.2012, 14.12.2012 and 09.03.2017 respectively have also held that in a case where the defendant was ex parte, the Court was not bound to frame issues, but only to consider the pleadings and the evidence produced on record besides the contentions raised in details and that ex parte judgment and decree of the trial Court could not be said to be suffering from any infirmity

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merely because issues were not framed because defendants had been proceeded against ex parte.

[9] Admittedly, the defendants were ex parte, therefore, there was no necessity to frame issues. The point in issue is with regard to the claim in suit for permanent prohibitory injunction for restraining the defendants, their agents, representatives and associates from dispossessing, making any kind of construction and interfering in any manner in the peaceful possession of the plaintiff over the land measuring 20 Biswas as per details given in the head note of the plaint/judgment and decree of the learned trial Court. Both the Courts below have held that the certificate issued by the Gram Panchayat Ex. P3 and as produced by the plaintiff/appellant in support of the plea of having been given the land in question by the Gram Panchayat did not bear the signatures of all the members of the Gram Panchayat nor had the plaintiff/appellant proved the aforesaid certificate as per the provisions of the Indian Evidence Act as no witness of the document in question had been examined by the plaintiff/appellant besides the plaintiff/appellant had produced copy of Jamabandi for the year 2011-12 which clearly revealed that it was the Gram Panchayat which was the owner and in possession of the suit land. Moreover, the site plan and photographs produced by the plaintiff/appellant did not establish the ownership of the plaintiff over the suit land and no other record had been produced to show that the plaintiff/appellant had in right or title of the suit land.

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[10] Since in the instant case, the plaintiff has failed to establish the possession over the suit land or the ownership of the suit land on the basis of alleged certificate issued by the Gram Panchayat, the judgment and decree of the Courts below do not warrant any interference as it is settled law that no injunction can be granted against the true owner which as per the record is the Gram Panchayat as is evident from the Jamabandi for the year 2011-12.

[11] In the circumstances, no substantial question of law much less question of law arises for consideration by this Court in the instant regular second appeal. Accordingly, finding no infirmity with the judgment and decree of the Courts below, the instant regular second appeal being bereft of merit is dismissed.

(B.S. Walia)
Judge

25.04.2023
'Amit'

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