

2024:PHHC:028552

5. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

6. The Gram Panchayat of Village Balahi, Tehsil Thanesar, District Kurukshetra filed civil suit no.858 of 1974 on 09.10.1974 against the proprietors of the village claiming that the suit property vests in the Gram Panchayat. The proprietors admitted the claim of the Gram Panchayat, which resulted in decree in 1975. The plaintiff was party to the aforesaid suit. He was served, however, he did not enter appearance. In 1989 he filed the suit for grant of decree of declaration that he is in possession of 12 kanals 4 marlas land and the decree passed in the year 1975 is illegal, null and void. The plaintiff claimed that he was not served in the previous suit. The defendant-Gram Panchayat while contesting the case claimed that the plaintiff was impleaded at Sr.no.66 of Annexure A and he was served with the notice. It was also claimed that the suit property vests in the Gram Panchayat. The maintainability of the suit was also questioned on the ground that the judgment and decree passed in 1975 is being challenged in the year 1983.

7. Both the courts arrived at a conclusion that the plaintiff has no right, title or interest in the property and he was not only a party but also served with a notice, however, he did not chose to appear, when the previous judgment and decree was obtained by fraud.

8. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith the requisitioned record.

9. Learned counsel representing the appellant submits that the previous decree passed in the year 1975 was without jurisdiction as Section 13 of the Punjab Village Common Land (Regulation) Act, 1961 was amended on 12.11.1974 while excluding the jurisdiction of the civil court. He submits that as per Section 13-B of the amended Act, the suits pending in the civil court were liable to be transferred to the Collector.

10. This Court has considered the submissions made by the learned counsel representing the parties.

11. It may be noted here that the previous suit was filed on 09.10.1974 when the civil court had the jurisdiction. Since in the aforesaid suit, the proprietors conceded to the claim of the plaintiff, thus the court passed the decree. During the pendency of the suit, Section 13 was added, however, this fact did not come to the notice of the civil court.

12. In any case, the plaintiff has to stand on his own legs. He claims to be in possession of 12 kanals 4 marlas land. He has failed to establish any right, title or interest in the property. He is merely claiming to be in possession of the same. However, both the courts have found that he has failed to establish the same. At this stage, after a period of nearly 49 years, it would not be appropriate to set aside the civil court decree, particularly when the jurisdiction of the civil court was not questioned in the first round and the appellant failed to contest the same. It may be noted here that previous suit was filed against 166 proprietors whereas only two plaintiffs are before this Court.

- 13.Keeping in view the aforesaid facts, no ground to interfere
is made out.
- 14.Hence, dismissed.
- 15.All the pending miscellaneous applications, if any, are also
disposed of.

28.02.2024
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE