

(1981) 11 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1142 of 1971

Chatra and others

APPELLANT

Vs

Bhanna and others

RESPONDENT

Date of Decision : 06-11-1981

Acts Referred:

Citation : (1982) PLJ 98 : (1985) RRR 415

Hon'ble Judges : J.V.Gupta, J

Advocate : Mr. Rajinder Krishan Aggarwal, Advocates., Mr. Bhoop Singh,
Advocates for appearing Parties

Judgement

J.V. Gupta, J.

1. The plaintiffrespondents Nos. 1 and 2, filed the present suit against defendantsappellants Nos. 1 to 4 and 3 to 7, on their behalf and as the representatives of the residents of village Mataur, Tehsil Narwana, District Jind, on the allegations that the site, in dispute, had been reserved for the common purposes of the people of the village such as the holding of the functions in the village and the stay of the marriage parties, and had been so used by them. The defendants had threatened to raise construction on the site, in dispute, and to obstruct the use of the same for the common purposes of the village without any right and as they did not desist from raising the structure, the present suit to restrain them from raising any structure on the site, in dispute, and for a direction to remove the structure, if any, raised thereon by them, was filed. The suit was contested on the ground that the defendants were the owners of Plot No. 1242/1 and 1242/2, that the suit land, vested in the Gram Panchayat and that they got the site, in dispute, in exchange from the Gram Panchayat in place of their Plot No. 1242/1 and 1242/2, vide resolution No. 101, dated April 4, 1967, passed by the Gram Panchayat, in that behalf. They had the right to raise the structure on the site, in dispute, as the owners thereof. On the pleadings of the parties, the trial Court framed the following issues :

(1) Whether the suit land is reserved for the common purpose of the inhabitants

of the village ?

(2) If issue No. 1 is proved whether the plaintiffs are entitled to the injunction prayed for ?

(3) Whether the defendants, have taken the suit land in exchange of their own land from the Panchayat, as alleged ? If so, its effect ?

(4) Relief.

Under water No. 3, it was held that the defendants were not proved to have taken the suit land in exchange of their land from the Panchayat because there was no permission by the State Government as required under the statute. Issues Nos. 1 and 2 were decided in favour of the plaintiffs. Consequently, their suit was decreed. In appeal, the findings of the trial Court were maintained by the lower appellate Court. Consequently, the decree passed by the trial Court in favour of the plaintiffs was affirmed. Dissatisfied with the same, the defendants have come up in a second appeal to this Court.

2. It is common case of the parties, that the suit land was reserved for the common purposes of the inhabitants of the village. Hence, the same vested in the Gram Panchayat under the Punjab Village Common Lands (Regulation) Act, 1961. The suit had been decreed by the two Courts below on the ground that the defendants had failed to prove any valid exchange of land in their favour, for want of the permission by the State Government as required under the statute.

3. The main controversy in this case is whether the plaintiffs are entitled to maintain the present suit which is the subjectmatter of issue No. 2. The lower appellate Court has observed that the defendants, in the absence of the prior approval of the State Government, could not claim the specific performance of the agreement of exchange and could not lawfully retain its possession even if the same had been delivered to them and the plaintiffs' right to use the property, in dispute, for the purposes of the village, could not be defeated. This approach of the lower appellate Court is illegal. The plaintiffs could succeed in the suit on the strength of their title. Once it is admitted that the suit land vested in the Gram Panchayat, in law, then the plaintiffs had no right to file the present suit. It was for Gram Panchayat to institute the proceedings if it thought it necessary to safeguard the interest of the villagers. The learned counsel for the appellants, was unable to support the findings of the lower appellate Court arrived at under issue No. 2. Even if it be assumed that the plaintiffs are beneficiaries being the inhabitants of the village, the present suit could not be maintained by them when, admittedly, the suit land, as observed earlier, vested in the Gram Panchayat.

4. Consequently, this appeal succeeds and is allowed. The judgment decree of the lower appellate Court are set aside and the plaintiffs' suit is dismissed with costs.