
(2010) 03 P&H CK 0327
In the Punjab And Haryana At Chandigarh

Devi Singh

APPELLANT

Vs

Gram Panchayat and Others

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Forest Act, 1927 — Section 4, 5
Limitation Act, 1963 — Section 5

Citation : (2010) 158 PLR 637

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—Plaintiff is in second appeal against the judgment and decree of First Appellate Court dated 21.11.2007 by which judgment and decree of the trial Court dated 07.04.2005 has been reversed.

2. Plaintiff filed a suit for declaration that he is the auction-purchaser of Khair trees vide resolution dated 23.7.1975 passed by Gram Panchayat of Village Kharkan Tehsil and District Hoshiarpur over the land measuring 18273 kanals 10 marlas situated in village Kharkan Hadbast No. 502 as per jamabandi for the year 1993-94 and that the subsequent auction of Khair trees from the aforesaid land by the Gram Panchayat in favour of defendants No. 2 and 3 on 10.1.2000 is illegal and also prayed for permanent injunction restraining defendant No. 2 from cutting and removing khair trees from the aforesaid land. The plaintiff has alleged that vide resolution dated 23.7.1975, he was the highest bidder for a sum of Rs. 13/- per foot in girth and had deposited Rs. 500/- towards earnest money. However, due to Government instructions, trees could not be cut or removed for 10 years. Recently, it came to his notice that defendant No. 1 has auctioned certain trees to defendant No. 3 on 10.1.2000 over looking his claim. Hence the suit. On notice, the defendants appeared through their counsels but the suit was only contested by defendant No. 1 as defendants No. 2 and 3 did

not contest the same. In the written statement, besides taking other preliminary objections, it was alleged that the suit is hopelessly time barred. On merits, it was pleaded that the property measuring 18273 kanals 10 marlas is owned and possessed by defendant Rs. having khair trees of a value more than Rs. 2 crores. The bid of the plaintiff, in the year 1975, was admitted but it was alleged that by resolution dated 20.11.1976, plaintiff was given 15 days notice to get the necessary permission to cut the trees, whichever came under the area falling u/s 5 of the Forest Act, 1927 (for short "the Act"). It was also pleaded that defendant No. 1 is not bound by the auction dated 23.7.1975 for all times to come. Defendant No. 1 has claimed that auction dated 10.1.2000 is well in accordance with law in which defendant No. 3 has given the highest bid of Rs. 1,46,00,100/-.

3. On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to declaration and injunction prayed for? OPP

2. Whether the suit is time barred and is not maintainable? OPP

3. Relief.

4. Plaintiff examined Dev Raj Panchayat Secretary, as PW1, Ravinder Singh, Clerk of District Forest Officer, Hoshiarpur as PW2 and himself as PW3.

5. On the other hand, defendant examined Kashmir Singh Sarpanch as DW1.

6. Trial Court decided both the issues in favour of the plaintiff and decreed the suit. However, first appeal filed by the defendant No. 1 was allowed by the First Appellate Court.

7. As per the record, the second appeal was filed after a delay of 11 days for which CM No. 6415-C-2008 was filed by the plaintiff/appellant, u/s 5 of the Limitation Act, 1963, for condonation of delay, which was allowed on 4.3.2009. Although, the appellant had filed CM No. 6416-C-2008, under Order 41 Rule 5 read with 151 of the Code of Civil Procedure, 1908 (for short "CPC"), for staying the operation of the impugned judgment and decree dated 21.11.2007. Yet another application, namely, CM No. 2562-C-2009 was filed, under order 39 Rule 1 & 2 of the CPC, for restraining respondent No. 1 from auctioning the khair trees during the pendency of the appeal. The application, namely, CM No. 2562-C-2009 and the main appeal were taken up on 4.3.2009, in which notice of motion was issued and parties were directed to maintain status quo till the next date of hearing. On the next date of hearing, the respondent filed an application, namely, CM No. 3429-C-2009, u/s 151 of the CPC, for vacation of the order of status quo dated 4.3.2009, in which notice was issued to the non-application/appellant on 20.3.2009 for 1.4.2009. In the meantime on 15.4.2009, while maintaining the interim order, Lower Court record was also requisitioned. On 1.5.2009, this Court passed the following order:

On 4.3.2009, this Court directed the parties to maintain status quo till the next

date of hearing.

Mr. K.S. Dadwal, counsel for respondent No. 1-Gram Panchayat village Kharkan submits that the felled trees are lying on the area within a radius of 3 kms. and there is every likelihood of theft/fire of the same. With the consent of the parties, Ms. Gaganpreet Kaur, Advocate, who is present in the Court, is hereby appointed as Local Commissioner, who shall visit the spot at village Kharkan Tehsil and District Hoshiarpur on 02.05.2009. The Local Commissioner shall prepare a report with the assistance of both the parties, Contractor and officials of Forests Department. The Local Commissioner shall ensure the proper counting of the trees and hand over the possession thereof to the District Forest Officer or any other officer appointed by the said Department for the safe custody of these trees in the interest of both the parties. The requisite report, so prepared, be submitted on the next date of hearing.

Learned Counsel for respondent No. 1 undertakes to inform the officials of the Forest Department so that they should make themselves available at the spot during the visit of the Local Commissioner and cooperate with her in undertaking the exercise in question.

The fee of the Local Commissioner is fixed at Rs. 15,000/- to be paid by the respondent No. 1 Gram Panchayat.

It is also pointed out that on the last date of hearing lower court record was requisitioned for today. However, the same has not been received as yet. Let it be made available positively before the next date of hearing.

A copy of this order be given dasti to the learned Counsel for respondent No. 1 under the signatures of Reader of this Court.

List on 19.05.2009.

Ultimately on 8.9.2009, following order was passed:

Vide order dated 1.5.2009, Ms. Gaganpreet Kaur, Advocate was appointed as Local Commissioner with directions to visit the spot at village Kharkan, Tehsil and District Hoshiarpur, for preparing a report with the assistance of both the parties, Contractor and officials of the Forest Department. The Local Commissioner was to ensure the proper counting of the trees and hand over the possession thereof to the District Forest Officer or any other official appointed by the said department for the safe custody of those trees in the interest of both the parties.

Ms. Gaganpreet Kaur, Advocate, who was appointed as Local Commissioner is present in the Court and has submitted her report, which is taken on record. As per the report, the Local Commissioner visited the spot on 2.5.2009, 16.5.2009 and finally on 30.5.2009. On the last date, last lot of Khair/logs and related material was counted and the possession thereof handed over to the officers authorized by the Divisional Forest Officer, who were associated in the process of counting of logs of Khair trees and other material. The Khair logs and other

material was stacked at Focal Point, Village Kharkan and the authorized officers took over their possession. In all, there were 9031 Khair logs (different dimensions), 372.09 cm³ (stacked) of Khair fuel wood and 22 quintals (filled in gunny bags) of Khair chips.

The Court has been informed by the learned Counsel for Gram Panchayat-respondent No. 1 that keeping the Khair logs and other related material as such would become counter productive as they might lose their value. Interest of justice demands that the same may be sold at the earliest and the price so received may be deposited with the Gram Panchayat and the Gram Panchayat would then deposit the said amount with a nationalized bank by way of fixed deposit.

Hearing of the case is adjourned to 8.12.2009.

In the meantime, Divisional Forest Officer, Hoshiarpur is granted permission to sell and dispose of the Khair logs, Khair fuel wood and Khair chips, as mentioned above, in open market within six weeks from today and the proceeds of the same be thereafter handed over to Gram Panchayat, Kharkan. After the receipt of the proceeds, Gram Panchayat shall invest the same in some nationalized bank in the shape of fixed deposit for a period of six months to begin with and subsequent renewal on the same terms, in case such a need so arises.

The Local Commissioner states that she has already received her remuneration apart from her miscellaneous expenses.

The Court expresses its gratitude to the Local Commissioner for doing a commendable job in completing the task assigned to her and preparing the detailed report.

8. While arguing on merits, learned Counsel for the appellant has submitted that as per the terms and conditions of the resolution dated 23.7.1975 (EX.P1) permission to cut the trees over the area u/s 5 of the Act was to be obtained by the defendant No. 1, therefore, the finding recorded by the First Appellate Court that permission was not obtained by the plaintiff/appellant is a clear misreading of evidence.

9. On the other hand, learned Counsel for the respondent-Gram Panchayat has submitted that the learned Lower Appellate Court has reversed the finding of the trial Court on both the issues. Inasmuch as, it has been held that suit filed by the plaintiff is neither maintainable nor within the period of limitation. It is also submitted that plaintiff/appellant has neither challenged the finding recorded under issue No. 2, in the memo of appeal, nor framed any question of law in that regard, therefore, finding recorded under issue No. 2 has been accepted by the plaintiff. On merits, it is submitted that resolution dated 23.7.1975 (Ex.PI) is followed by resolution dated 20.11.1976 (Ex.DI) which provides that the contractor/appellant be given notice for taking permission of the Government within next 15 days and in case it does not get the permission then the

Panchayat had a right to auction the trees. Further another resolution was passed on 28.5.1977 (Ex.D-2) in which it is provided that despite the notice to the plaintiff, he could not produce permission. Thus, again 8 days time was given to the appellant to seek permission otherwise the trees would be re-auctioned. He also refers to resolution Ex.P-3 dated 10.1.2000 pursuant to which, wide publication was given in the newspaper, namely, English Tribune, Hindi Tribune, Punjabi Tribune and Ajit, regarding re-auction of khair trees. It is submitted that re-auction has been done in favour of defendant No. 3 for a sum of Rs. 1,46,00,100/-. It is also alleged that plaintiff has already cut trees over an area of 800 acres, which was covered u/s 4 of the Act and the dispute is only with regard to 525 acres of land, which falls u/s 5 of the Act. It is further alleged that plaintiff has obtained demarcation of the area of Section 4 of the Act only but he did not obtain demarcation of the area falling u/s 5 of the Forest Act as no permit was issued. It is further submitted that even the auction, which was, made in favour of defendant No. 3, for a sum of Rs. 1,46,00,100/-, could not materialize because the cheques given by it to the Gram Panchayat have been dishonored as a result of which it was not allowed to cut the trees and the security deposit of Rs. 25,000/- was also forfeited. It is further submitted that as per felling, approximately 9979 trees were put to auction on 17.1.2009, on approval by the Government, in favour of Rule K. Puri and Amar Chand resident of village Haibowal Beat, Tehsil Garhshankar, District Hoshiarpur for a sum of Rs. 2,40,01,000/-. The said contractor has already deposited a sum of Rs. 1,10,00,000/- with the Gram Panchayat and has taken permit to cut the trees. It is further submitted that the said contractor had already taken export permit granted by Divisional Forest Officer, Hoshiarpur, pursuant to which he has cut 4100 trees and as per export permit 2600 trees have already been taken out and rest of the trees are still lying cut for export. It is further argued that the Gram Panchayat/defendant No. 1 is already facing a litigation initiated by the subsequent contractor Rule K. Puri, who has filed a suit for recovery of Rs. 1,28,04,500/-. Due to the present litigation, the said suit is pending, before Civil Judge (Sr. Division), Hoshiarpur, for evidence.

10. In have heard both the learned Counsel for the parties and perused the available record with their assistance.

11. Admittedly, the plaintiff got the contract of cutting & removing of khair trees over an area of 18273 kanals 10 marlas owned by Gram Panchayat, Kharkan vide resolution dated 23.7.1975 (Ex.P1) and had deposited Rs. 500/- towards earnest money. Admittedly, the trees were in the areas as per Section 4 and 5 of the Act. The plaintiff/appellant had already cut trees falling in the area u/s 4 of the Act measuring 800 acres but could not cut the trees in the year measuring 525 acres falling u/s 5 of the Act. Plaintiffs case is that there was a ban for cutting the trees and permission was sought by the defendant No. 1 as per resolution dated 23.7.1995 (EX.P1) whereas, case of the defendant No. 1 is that resolution dated 20.11.1976 (Ex.D1) and resolution dated 28.5.1977 (Ex.D2) were passed by defendant No. 1 impressing upon the plaintiff/appellant to seek

necessary permission otherwise, he was clearly told that trees would be re-auctioned. It is also the case of the defendant that plaintiff had withdrawn earnest money of Rs. 500/- in the year 1979 and did not take any action till the year 2000 when the trees were to be re-auctioned. It has also been brought on record that re-auction dated 10.1.2000 has not materialized as the cheques deposit by the auction-purchaser was dishonored. In the year 2009, the trees have been re-auctioned to the subsequent contractor for a sum of Rs. 2,40,01,000/- who have already cut large number of trees and have removed some of them. From the resume of the aforesaid fact, it is clear that the appellant had failed to seek permission, which was asked vide resolution Ex.D1 and D2 and had not challenged the action of the defendant for a number of years together. Moreover, the appellant does not have any cause of action against defendant No. 1 because in the present suit, since he has challenged auction in favour of defendant No. 3, which has already failed on account of the fact that defendant No. 3 did not deposit the earnest money as the cheques furnished by the defendant No. 3 have already been dishonoured, therefore, the cause of action in para 6 of the suit "that the cause of action accrued to the plaintiff from the date of alleged subsequent auction of these khair tees on 10.1.2000" has already become redundant as the trees have not been sold and defendant No. 3 did not even come forward to contest the suit. In fact the trees have been sold by way of Resolution dated 17.1.2007 for a sum of Rs. 2,40,01,000/- for which there is no suit filed by the plaintiff. Besides this, the present appeal also deserves to be dismissed for the reason that the plaintiff has not challenged finding recorded on issue No. 2 by learned First Appellate Court as there is no reference of challenge to finding recorded under issue No. 2 in the grounds of appeal nor any questions of law has been framed in that regard. Thus, I am of the view that the appellant has failed to agitate against the finding recorded under issue No. 2, therefore, if the finding on issue No. 2 would have become final then the suit is not maintainable as it is barred by limitation.

12. Viewed from any angle, I do not find any substantial question of law involved in this present appeal. Hence, the same is hereby dismissed, though, without any order as to costs.