

(2010) 10 P&H CK 0230

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4095 of 2010 (O and M)

Gram Panchayat

APPELLANT

Vs

Sheo Karan and Others

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Citation : (2010) 10 P&H CK 0230

Hon'ble Judges : Gurdev Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gurdev Singh, J.

C.M. No. 12303-C of 2010

1. Heard.

2. For the reasons mentioned in the application, which is supported by an affidavit, the delay in refiling the appeal is condoned.

3. Application is disposed of accordingly.

RSA No. 4095 of 2010 (O and M)

4. The suit was filed by Sheo Karan-plaintiff-respondent No. 1 for the recovery of Rs. 5,00,000/-along with interest at the rate of 18% per annum, as damages/compensation on account of collapse of his shop due to wrongful act, negligence, lapses and in action on the part of the defendants and for loss of business and damages to his goods lying in the shop as well as for mental torture, pain, harassment and humiliation suffered by him. His suit was decreed for compensation of Rs. 1,00,000/-along with interest at the rate of 6% per annum against all the defendants. The present appellant-defendant No. 5 preferred first appeal against the judgment and decree of the trial court dated 17.4.2009, but the same was dismissed by Additional District Judge(Ad hoc), Sirsa, vide

judgment and decree dated 3.6.2010. Now, that defendant has come with this present second appeal for setting aside the judgments and decrees of both the courts below.

5. The case of the plaintiff, as pleaded in the plaint, is that his sole source of livelihood was a small grocery shop in his house situated in village Nanuana, Tehsil Rania, District Sirsa. Previously, the rainy and dirty water from the street in front of his house, used to be discharged into the pond situated nearby. The level of the street, in front of his house, was raised by defendant No. 5-appellant; as a result of which the flow of the rainy and other water was obstructed. In January and February, 2002, the rainy water accumulated in the street, which was got discharged by the authorities. Again in the month of May/June, 2003, rainy water accumulated at that place and he along with other inhabitants of the street approached the concerned authorities, but no step was taken. As a result of accumulation of water for a long period, the walls of his house sustained cracks and ultimately the same collapsed, causing damage to his goods lying in the shop, loss of business, mental torture, pain, harassment and humiliation.

6. The suit was contested by defendants No. 4 and 5. Defendant No. 4 in his written statement admitted the location of the house/shop of the plaintiff in the village and also the paving of the street in the village. The other contentions made in the plaint were denied. It has been pleaded that the puccastreet was constructed in the year 1987 and there is no pond in the village near the house of the plaintiff. No application was ever moved before him by the plaintiff or the other inhabitants of the street. It was a kachahouse, which was constructed by the plaintiff about 50 years back. Preliminary objections in that written statement were also taken to the effect that the plaintiff has no locus standi or cause of action to file the suit and that he is estopped from filing the same by his own act and conduct and the same is bad for non-joinder of the necessary parties. Similar pleas were taken by defendant No. 5 in the written statement filed by it. In addition to that, it was pleaded that the street was constructed properly and no body had any complaint. It was Veer Singh-ex Sarpanch, who in connivance with the other inhabitants of the street, reconstructed it while raising the level thereof in order to put the inhabitants to trouble, who made a complaint to the authority, which intervened and still Veer Singh, Sarpanch completed the construction illegally and malafide. It is not responsible for any loss incurred due to misdeeds of Veer Singh.

7. In the replications to the written statements, the plaintiff denied the contentions made therein and reiterated his averments made in the plaint.

8. On the pleadings of the parties, following issues were framed by the trial court:-

1. Whether on the grounds mentioned in the plaint for causing damage to the business of the plaintiff, the latter is entitled to decree of recovery of rupees five

lacs as compensation along with interest at the rate of 18% per annum as prayed for? OPP

2 Whether the plaintiff has no cause of action to file the present suit? OPD

3. Whether the suit is bad for non-joinder of necessary parties i.e. Gram Panchayat? OPD

4. Whether the plaintiff has no locus-standi to file the present suit? OPD

5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD

6. Whether the Civil Court has no jurisdiction to try and entertain the present suit? OPD

7. Whether no notice has been served under Haryana Panchayati Raj Act upon the defendants, if so to what effect? OPD

8. Relief

9. Only the plaintiff produced evidence in support of his contention whereas no evidence was produced by the defendants. After going through the evidence and hearing counsel for the parties, learned trial court decided all the issues in favour of the plaintiff and resultantly decreed his suit, as aforesaid. Defendant No. 5 filed appeal against the judgment and decree but the same was dismissed.

10. I have heard counsel for appellant-defendant No. 5.

11. It has been submitted by counsel for defendant No. 5 that the findings of the trial court and the First Appellate Court are based upon no evidence as no assessment report regarding the extent of damage caused to the house of the plaintiff was proved on the record. It was on account of the illegal act of Veer Singh, Ex Sarpanch, that the damage was caused to the house of the plaintiff, for which defendant No. 5, who is the Gram Panchayat, cannot be penalised.

12. It cannot be said that the findings of the lower courts are based on no evidence. Oral evidence was produced regarding the damage caused to the house of the plaintiff, on account of acts and omissions on the part of the Gram Panchayat. Those facts could have been proved by oral evidence. No evidence was produced by the defendants in rebuttal and correct finding was recorded on the basis of that evidence. No evidence was produced by defendant No. 5 that it was Veer Singh, Sarpanch, who caused the raising of the level of the street in front of the house of the plaintiff. There is no rebuttal to the evidence of the plaintiff that this was the act of defendant No. 5.

13. Thus, no substantial question of law arises in this appeal. Accordingly, the same is hereby dismissed.