
(1990) 08 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2877 of 1989

Gram Panchayat	Vs	APPELLANT
Surat Singh and Another		RESPONDENT

Date of Decision : 27-08-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 115

Citation : (1991) 99 PLR 157

Hon'ble Judges : Ashok Bhan, J

Bench : Single Bench

Advocate : R.S. Mathi and P.S. Sandhu, for the Appellant; I.S. Bajwa, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhan, J.—Surjit Singh and Harbans Singh as plaintiffs filed a suit against the Gram Panchayat of village Kate Ke uttar, Tehsil Patti, District Amritsar through Sarpanch Balwinder Singh on 18-11-1983 seeking permanent injunction, restraining the defendant from interfering with their possession or" dispossessing them from the land measuring 63 kanals 5 marlas specified in the heading of the plaint.

2. An ex-parte decree was passed in their favour on 14-10-1985. and an injunction was issued against the Gram Panchayat restraining from interfering with the possession of the plaintiff or from dispossessing them from the suit land otherwise then by due process of law.

3. That on 15-11-1985 the defendant Gram Panchayat, made an application under Order 9 Rule 13 read with Section 151 of the CPC for setting aside the ex-parte decree. That application was contested by the plaintiffs. The trial Court after recording the evidence adduced came to the conclusion that no case is made out for setting aside the ex-parte decree dated 14-10-1985 and thus dismissed the application under Order 9 Rule 13 of the Code vide his order dated

21-9-1987. Against this order dated 21-9-1987, an appeal was preferred by the Gram Panchayat before the District Judge, Amritsar through Sarpanch Balwinder Singh.

4. A preliminary objection was taken by the counsel appearing for the plaintiffs Surjit Singh and Harbans Singh that the appeal before the District Judge was not properly constituted as there was no resolution passed by the Gram Panchayat of Village Kale Ke Uttar authorising the Sarpanch to file the appeal against the order dated 21-9-1987. This objection was sustained by the lower appellate Court and the appeal was dismissed on the ground that it was not properly constituted. No decision was given on merit. Against the said order the present revision petition has been filed.

5. The learned counsel appearing for the petitioner has argued that in the resolution passed by the Gram Panchayat on 15-11-1985 it was resolved that Sarpanch be authorised to get the ex-parte decree set aside and this resolution would authorise the Sarpanch to file an appeal to the appellate Court as well as to revisional Court and that no other resolution is required to be passed at subsequent stages i.e. in the event of dismissal of the application filed for setting aside of the ex parte decree or even the appeal. The present revision petition has also been filed on the basis of the resolution dated 15-11-1985." It was further urged by the counsel appearing for the Gram Panchayat that the judgment reported as *Garib Chand v. Municipal Committee, Budhada* (1979) 81 P.L.R. 526, on which reliance has been placed by the appellate Court has also been set aside by this Court is a judgment reported as *Municipal Committee, Bhatinda v. Sadhu Singh* (1986-2) 90 P.L.R. 1. I agree with the contentions raised by the learned counsel for the petitioner. The earlier resolution dated 15-11-1985 did not confine the authority of the Sarpanch to file an application under Order 9 Rule 13 of the Code before trial Court only for setting aside the ex-parte decree. It authorised the Sarpanch to file an appeal and revision also. Once a resolution has been passed by the Gram Panchayat for getting the ex-parte decree set aside and the Sarpanch has been authorised in the resolution to get the same done then it clearly means that he was empowered to take all steps at every stage for getting the ex parte decree set aside. As the trial Court refused to set aside the ex-parte decree and dismissed the application filed for that purpose, the Sarpanch was within his rights to file an appeal on the basis of the written resolution dated 15-11-1985 for the purpose of getting ex-parte decree set aside to file an appeal before the appellate Court. Appeal and revision is otherwise also a continuation of the suit itself. Once a Sarpanch has been authorised to file an application for setting aside the ex-parte decree then it would automatically vest him with the authority to file an appeal also in case the application is dismissed by the trial Court. The appellate Court was thus wrong in dismissing the appeal as not being properly constituted. I therefore, set aside the ex-parte decree passed by the appellate Court and remand the case back to the District Judge for deciding the appeal on merits. There will be no order as to costs.