

(2001) 04 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No.981 of 2001

Gram Panchayat, Chaudhary Majra

APPELLANT

Vs

Mandeep Singh

RESPONDENT

Date of Decision : 30-04-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2001) 3 RCR(Civil) 782

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. Arun Palli, for the Appellant; Mr. R.K. Gupta, for the Respondent

Final Decision : Allowed

Judgement

R.L. Anand, J.—This civil revision has been directed against the order dated 22.1.2001 passed by the Court of Additional Civil Judge, Senior Division, Nabha, who dismissed the objections u/s 47 CPC of Gram Panchayat, Village Chaudhary Majra.

2. Some facts can be noticed in the following manner. Decree dated 15.6.1994 was passed by the Court of Additional Senior Sub Judge, Nabha, in Civil Suit No. 22 dated 21.1.1994 titled as "Mandeep Singh v. Gram Panchayat" on the basis of a compromise which was effected between the parties through Beant Singh, the then Sarpanch of Gram Panchayat. Decree holder filed execution application in the Executing Court and Gram Panchayat filed objections u/s 47 Code of Civil Procedure. It was pleaded by the Gram Panchayat that impugned judgment and decree passed on the basis of a compromise itself is illegal, null and void and is not binding on the Gram Panchayat as Gram Panchayat never authorised Beant Singh to enter into a compromise. In the absence of any authorisation in favour of Beant Singh, the alleged compromise on the basis of which the decree has been passed is patently illegal, null and void and cannot be enforced in the eyes of law. It was also pleaded by the Gram Panchayat that it never authorised Beant Singh, the then Sarpanch to admit the claim of the plaintiff. Moreover, the

subject matter in the civil suit was wholly foreign to the jurisdiction of the said court and that Court had no jurisdiction to pass a decree. It was also prayed by the Gram Panchayat that a fraud has been practiced on the Court and in these circumstances, the decree and judgment may be treated as null and void and the execution application may be dismissed.

3. Notice of the petition was given to the decree holders who filed reply and denied the allegations made against them.

4. According to the decree holders, Gram Panchayat passed the resolution dated 31.1.1994 and gave all powers qua the suit to the then Sarpanch Beant Singh. Moreover, in the year 1992, Baldev Singh, the present Sarpanch of Gram Panchayat was the Sarpanch of Gram Panchayat. On 12.9.1992, the Gram Panchayat under the chair of Baldev Singh, Sarpanch, passed a resolution for construction of a culvert on the phirni of the village for passing of the overflowing water of the pond along with the link road going to village Kaul and for stopping said water from spreading and stagnating on the road. After taking permission of the BDPO, the culvert was duly constructed. The decree in question is nothing but a confirmation of the old position, which was confirmed by Shri S.S. Grewal, Advocate, of Nabha as a Local Commissioner in another suit qua the subject matter in question. The decree holder stated that the compromise is binding on the Gram Panchayat and the objections are abusing of process of law. It is also the stand of the Gram Panchayat that since Baldev Singh Sarpanch was a party to the resolution, therefore, he is barred from taking the objections. The parties advanced their arguments before the Executing Court and for the reasons given in para 5 of the, impugned order, the objections of the Gram Panchayat were dismissed and aggrieved by the impugned order dated 22.1.2001, the present revision has been filed by the Gram Panchayat.

5. I have heard the learned counsel for the parties and with their assistance, I have gone through the record of the case.

6. Before dealing with the submissions raised by the learned counsel for the parties, first of all, I would like to reproduce para 5 of the judgment passed by the learned trial Court :-

After giving careful thought to the submissions of both the sides, the Court finds merit in the argument of the counsel for the respondent-decree holder the decree under execution has neither been challenged so far nor its operation has been stayed by the Competent Court. Moreover, this decree has passed a compromise decree on the basis of defendant in the main suit. Now this executing Court is just to execute the decree in letter and spirit and Court cannot go beyond the decree and to look into allegations regarding illegality of the same. This decree has not been challenged so far. In the objections too, the objector has also admitted this fact by saying that present Sarpanch was also Panch in the Gram Panchayat at that time and he was also party to the compromise on the basis of which compromise decree was passed. Perusal of the

file shows that Baldev Singh also suffered compromise dated 15.6.1994 (Ex.CX) as witness and compromise has been effected and suit was decreed. Since JD/Objector has not challenged the decree holder execution and decree is still existing and operative and construction of the culvert in the phirni for passing of overflowing of water by the side of road and permission was granted by BDPO and even a resolution was duly passed in favour of Beant Singh by Gram Panchayat who was competent to contest the suit. Hence since the decree is duly passed by the competent civil Court, so the Executing Court is not to ascertain its legality as the best remedy for the JD/Objector was with him to challenge in it appellate Courts but this has not been done. Hence, the application in hand is, hereby dismissed, being devoid of any merit."

7. Learned counsel for the petitioner vehemently submitted that the impugned judgment and decree on the basis of which execution application has been filed is a nullity and the Executing Court in these circumstances can go behind the decree. In support of his contention, the learned counsel for the petitioner submitted that the impugned judgment and decree dated 15.6.1994 as passed on the statement of Beant Singh, the then Sarpanch and Gram Panchayat had never authorised Beant Singh to make any statement before the trial Court to effect compromise on behalf of the Gram Panchayat is binding on the interest of the Gram Panchayat, On the contrary, the learned counsel for the respondents stated that Beam Singh was authorised by Resolution No. 1 and he was given all the powers qua the suit and, therefore, if any statement has been made by Beant Singh in the discharge of his duties as Sarpanch, it binds the Gram Panchayat. Also it has been submitted by the learned counsel for the respondents that a compromise was also signed by the lawyer and the lawyer has the authority not only to contest the suit but also to effect compromise. Lastly, it was submitted by the learned counsel for the respondent that the present Sarpanch Baldev Singh was the signatory of resolution No. 1 and now it is not open to him to say that the decree is a nullity.

8. I have considered the rival contentions of the parties and in my view this revision deserves to succeed. The proved facts are that the suit was instituted by Man-deep Singh and Bupinder Kaur against Gram Panchayat which is a statutory body. The statutory body functions through resolutions. Resolution No. 1 was produced during the course of the submissions authorised Beant Singh to enter into a compromise on behalf of the Gram Panchayat. It only authorised to contest the suit having power of attorney and make statement on behalf of the Gram Panchayat for the purposes of defence. Since Beant Singh was not authorised to enter into any compromise on behalf of the Gram Panchayat, therefore, any statement made by him is not binding on the Gram Panchayat and a decree which is based on illegal authority is a nullity in the eye of law and the Executing Court has the power to go behind the decree. The learned counsel for the respondents in this connection relies upon *Sadhu v. Gram Panchayat, Akalian* 1990(1) RCR 555 (P&H): 1990 S C C 94 (P&H) wherein it was observed that corporate bodies are not living persons and can speak only through resolutions.

In the absence of any resolution, authorising a particular person to act or to conduct or to defend a case, that act or deed shall be deemed to be without any authority and the act or the result of the case cannot be binding on the corporate body. Reliance was also placed upon by the learned counsel for the respondents on State of Haryana through Collector, Hissar v. D.C.M. Hissar 2001 RCR 58 where this Court has been given an exception to the general rule that the Executing Court cannot go behind the decree. Faced with this difficulty, learned counsel for the respondents relies upon Pardaman Singh and another v. Narain Singh and another 1991 S C C 803 wherein it has been observed that Advocate has implied authority to give his consent to the proposal of the opposite party in the absence of specific instruction from his client not to agree to such a proposal- If the litigants are permitted to make such allegations, they will challenge all those actions of their counsel which they later on find inconvenient to them. Yet reliance was also placed upon Mewa Singh and others v. Dalip Singh and others 1976 PLJ 291. I have gone through this judgment. The judgment is absolutely off the track and has no bearing on the case. I am not able to subscribe to the arguments of the learned counsel for the respondents when he submitted that Baldev Singh was the signatory of the resolution and 6 members out of the authorised members by majority passed the said resolution. In the present case Beant Singh has not been authorised to make any statement.

9. I accordingly allow this revision and set aside the impugned order by observing that it will always be open to the Gram Panchayat to pass a fresh resolution in accordance with law.

10. Revision allowed.