
(2000) 12 P&H CK 0088
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3942 of 2000

Gram Panchayat, Fatehgarh

APPELLANT

Vs

Raghu Nath and others

RESPONDENT

Date of Decision : 05-12-2000

Acts Referred:

Citation : (2005) 1 CivCC 691 : (2005) 1 CivCC 691 : (2004) 4 RCR(Civil) 781

Hon'ble Judges : V.K.Jhanji, J

Advocate : Mr. S.S. Dinarpur, Advocate., Advocates for appearing Parties

Judgement

V.K. Jhanji, J.

1. This revision petition is directed against order dated 26.8.2000 of Additional Civil Judge (Sr. Division), Jagadhri, whereby application of the Gram Panchayat (petitioner herein) for setting aside ex parte order dated 1.4.1997, has been dismissed.

2. Plaintiffs (respondents herein) filed suit for permanent injunction restraining defendant Gram Panchayat (petitioner herein) and one Balbir Singh son of Antu Ram from interfering in their possession over the suit land in any manner whatsoever. Petitioner was proceeded against ex parte in the said suit on 1.4.1997. Petitioner filed an application for setting aside ex parte order dated 1.4.1997, stating therein that it had not been served in the suit and the report of refusal on the summons was obtained by respondents in collusion with the process server. In reply to the application, respondents contended that the Sarpanch of Gram Panchayat refused to accept service of summons and so, it was rightly proceeded against ex parte. Respondents also stated that the application of the petitioner is barred by time. Trial Court dismissed the application solely on the ground that the same is not maintainable because it had not been filed by a person authorised by the Gram Panchayat in this regard. Trial Court held that no resolution passed by the Gram Panchayat in favour of Ranjit Singh, Sarpanch, who filed the application has been produced. Hence, the present revision petition.

3. The contention of learned counsel for the petitioner is that respondents never took any objection to the fact that application for setting aside ex parte order dated 1.4.1997 was not accompanied by resolution of the Gram Panchayat. It is contended that the trial Court could not dismiss the application on the ground of nonmaintainability without giving any opportunity to the petitioner to produce the resolution. Against this, learned counsel appearing on behalf of respondents has contended that it was mandatory on the part of the petitioner to place on record the resolution authorising Ranjit Singh, Sarpanch, to file the application. Reference in this regard has been made to Rule 16 of the Punjab Village Common Lands (Regulation) Act, 1961 which provides for passing of a resolution by the Gram Panchayat for appointing Sarpanch or any other Panch to contest any suit filed by or against the Panchayat and the Sarpanch or Panch so appointed has to file a copy of the resolution duly attested by the Sarpanch under the seal of the Panchayat in the Court along with other documents.

4. After hearing the learned counsel and going through the record, I am of the view that the order under revision is not sustainable. It is true that Rule 16 of the 1961 Act *ibid* provides for passing of a resolution authorising the Sarpanch or Panch to contest any suit filed by or against the Panchayat and to produce the resolution in the Court, but having regard to the fact that no such objection was taken by the respondents nor any opportunity to produce the resolution was afforded to the petitioner by the trial Court, I am of the view that the order under revision deserves to be set aside. The issues framed on the pleadings of the parties too do not indicate that any such objection was taken at the time of framing of issues. The only issue framed by the trial Court was whether there is sufficient ground for setting aside ex parte order dated 1.4.1997. In absence of any objection or issue in this regard, trial Court if was of the view that the application was not maintainable, ought to have given an opportunity to the petitioner to produce the resolution authorising Ranjit Singh, Sarpanch, to file the application.

Consequently, the revision petition is allowed and order under revision, set aside. Trial Court is directed to redecide the application for setting aside ex parte order dated 1.4.1997 in accordance with law.

Revision allowed.