
(2012) 02 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 6600 of 2010 (O and M)

Gram Panchayat, Jalota

APPELLANT

Vs

Manhati @ Manhi and Others

RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : (2012) 166 PLR 643

Hon'ble Judges : M.M.S. Bedi, J

Bench : Single Bench

Advocate : Vikram Singh, for the Appellant; R.S. Mittal with Mr. Sudhir Mittal and Mr. Durgesh Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

M.M.S. Bedi, J.—The defendant-petitioner has filed this revision petition against the order dated May 26, 2010 passed by Additional District Judge, Sonapat, dismissing the application of the petitioner-Gram Panchayat for condonation of delay of six months in filing of the appeal. The plaintiff-respondents had filed a suit to restrain defendant-respondents No. 13 and 14 for declaration, mandatory injunction and permanent injunction challenging the mutation, changing the nature of the land in dispute from cremation ground and Hadwara to Gair Mumkin Banjar Qadim. An injunction was sought against the defendant-respondents 1, 2, 13 and 14 to construct a road on the property in dispute. Petitioner-defendant No. 3 had filed a separate written statement taking up specific plea that the suit was not maintainable and that the civil Court had no jurisdiction. The locus standi of the plaintiff-respondents to file the suit had also been challenged. The maintainability of the suit, as per the provisions of Order 1 Rule 8 CPC was also challenged.

2. The trial Court had decreed the suit of the plaintiff-respondents holding that mutation entry dated January 22, 1997 was wrong. The revenue authorities and the defendant-petitioner were restrained from changing the nature of the suit

land or from constructing a road on the suit land or from encroaching upon the land, in any manner.

3. Appeal was filed by the petitioner aggrieved by the judgment and decree after a delay of six months taking up the plea that delay had taken place on account of the election of Gram Panchayat. It was pleaded in the application that the Gram Panchayat was proceeded against ex-parte on November 25, 2005 and had contested the case through previous Sarpanch in collusion with the plaintiff-respondents No. 1 to 8. When the present Gram Panchayat came to learn about the passing of impugned judgment and decree dated October 21, 2009 only on April 1, 2010 on receipt of notice in execution petition, the Gram Panchayat passed a resolution authorizing Sarpanch Devender Singh to apply for the certified copy of judgment and decree which was supplied on April 15, 2010. The application was contested on the ground that the Gram Panchayat was represented by Ex-Sarpanch and that the present Sarpanch had been negligent in pursuing the case despite knowledge. The lower Appellate Court vide impugned judgment and decree dated 21.10.2009 formed an opinion that Ex-Sarpanch Satbir Singh and present Sarpanch Ghanshyam Dass were fully aware of the pendency of the suit. The Gram Panchayat was proceeded against ex-parte in the year 2005 and the judgment and decree had been passed in the year 2009. It was not expected that for four years, the Gram Panchayat was not aware of the proceedings or the final decree.

4. Learned counsel for the petitioner has contended that the defendant-petitioner Gram Panchayat has been able to establish that there had been collusion of the previous Sarpanch with the plaintiffs who are also the residents of the same village. It has been argued that on merits, the Gram Panchayat has got a reasonable good arguable matter as prima facie Civil Court does not have any jurisdiction. On merits, the plea of the Gram Panchayat that civil Court does not have any jurisdiction and that DWs 1 and 2 having not been cross-examined are sufficient grounds for setting aside the judgment of the trial Court being without jurisdiction.

5. Mr. R.S. Mittal, learned senior counsel for the plaintiff-respondents has vehemently contended that the delay has not been sufficiently explained by the petitioner.

6. I have heard counsel for the petitioner as well as counsel for the respondents. I have gone through the judgment of the trial Court which has been passed against the Gram Panchayat/petitioner ex-parte. The crucial issues regarding maintainability of the suit under Order 1 Rule 8 CPC and jurisdiction of Civil Court are required to be adjudicated upon by the lower Appellate Court. In case the said issues besides all the controversies on merits are not adjudicated upon, the chances of Gram Panchayat-petitioner losing the title in the property is not ruled out. It is the bounded duty of the Court to enable bodies like Gram Panchayat to fairly contest the title of the property and to ensure that the land of State or Gram Panchayat do not wrongly fall into the hands of members of

Society. A fair opportunity deserves to be granted to the petitioner to have fair adjudication of the matter. It is apparent from the record that the Gram Panchayat had been negligent in pursuing the matter from the very beginning. Whether it was on account of collusion or on account of inadvertence, is not required to be determined. The interest of justice would require that by imposing cost of Rs. 20,000/-, the defendant-petitioner should be granted an opportunity to contest the appeal. The revision petition is allowed. The impugned order dated May 26, 2010 is hereby set aside. The delay of six months in the filing of the appeal is hereby condoned subject to payment of cost of Rs. 20,000/-. The parties are directed to appear before the lower Appellate Court on March 31, 2012 and offer the cost of Rs. 20,000/-. The lower Appellate Court will decide the appeal on merits, in accordance with law.