

(2001) 02 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1341 of 1994

Gram Panchayat Pireke Uttar

APPELLANT

Vs

Harnam Singh

RESPONDENT

Date of Decision : 13-02-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Punjab Village Common Lands (Regulation) Act, 1961 — Section 2

Citation : (2001) 4 RCR(Civil) 831

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : C.M. Munjal, for the Appellant;

Final Decision : Allowed

Judgement

M.L. Singhal, J.—Harnam Singh and others filed suit for declaration that they are owners of the land as detailed in the head-note of the plaint in the shares mentioned therein against the Gram Panchayat of village Pireke Uttar. It was alleged in the plaint that land measuring 318 Kanals 2 Marlas as mentioned in the Jamabandi for the year 1946-47 of village Pireke Uttar was previously shamilat deh. Every proprietor had a share therein in proportion to his holding in the village. Every proprietor was in possession of the land per his share. Land had been partitioned among the proprietors of the village before 26.1.1950 and the land which had fallen to their share on partition was brought under their individual cultivation, Mutation No. 385 dated 22.7.1957 was sanctioned in favour of the Gram Panchayat on their back. No notice was given to them prior to the sanctioning of that mutation in favour of the Gram Panchayat. Mutation as such has no effect so far as their rights in the land are concerned. Plaintiffs sought declaration that the said mutation is null and void qua their rights. By way of consequential relief they sought permanent injunction restraining the Gram Panchayat from alienating the land by way of sale, mortgage, etc.

2. One Surjan Singh alleging himself to be acting Sarpanch of the Gram

Panchayat Pireke Uttar filed written statement on behalf of the Panchayat contesting the suit for the plaintiffs. Plaintiffs' suit was decreed by the Subordinate Judge First Class, Ferozepur vide order dated 18.9.1992. Gram Panchayat went in appeal which was dismissed by Additional District Judge, Ferozepur vide order dated 28.2.1994.

3. Before the Additional District Judge, Ferozepur, one of the submissions made by the learned Counsel for the Grain Panchayat was that the suit was not contested by a duly authorised person. Suraj Singh, who had filed written statement, was not a duly authorised person by the Gram Panchayat. He was not Sarpanch of the Gram Panchayat at the relevant time. Learned Additional District Judge brushed aside this submission by observing that "Suraj Singh had filed written statement as acting Sarpanch of the Gram Panchayat and had engaged counsel and the counsel filed written statement on behalf of the Gram Panchayat. Suit had been filed on 10.1.1990 and the same was decided on 18.9.1992 and it cannot be said that the suit was not properly pursued and that the written statement had not been filed by a proper party. Learned Additional District Judge, thus, did not deal with this contention raised by the learned counsel for the Gram Panchayat appellant in its correct perspective. He ought to have inquired into whether at the relevant time, Surjan Singh was acting Sarpanch of the Gram Panchayat and whether he had been authorised by the Gram Panchayat through a resolution to engage counsel and defend the suit on behalf of the Gram Panchayat. Plaintiffs 1 to 3 have laid claim to the other 1/3 share of land measuring 83 Kanal 17 Maria. Plaintiffs 4 to 7 have laid claim to the other 1/3 share of this land. Plaintiffs 8 to 10 have laid claim to the remaining 1/3 share of this land. Plaintiff No. 11 has laid claim to land measuring 98 Kanal 6 Maria saying that this land was shamilat deh but had been partitioned and brought under individual cultivation of the proprietors of the village prior to 26.1.1950 and as such this land could not be viewed as shamilat deh as defined in the Punjab Village Common Lands (Regulation) Act, 1961.

4. Gram Panchayat is a public body. Plaintiffs should not have been allowed to lay claim to the property which has been lying mutated in the name of Gram Panchayat (public body) since 22.7.1957 until the plaintiffs have brought home to the Gram Panchayat their claim to the hilt. So, the judgment and decree passed by the learned Additional District Judge, Ferozepur are set aside and he is directed to decide the appeal afresh after going into the point thoroughly whether Surjan Singh was acting Sarpanch of the Gram Panchayat at the relevant time and further whether he had been authorised by the Gram Panchayat through a resolution to defend this case and engage counsel. He will also go into this point as to why Surjan Singh did not produce any evidence to rebut the case of the plaintiffs.

5. Parties shall appear before the learned District Judge, Ferozepur on 31.3.2001. Learned District Judge may decide this appeal by himself or may assign it for disposal to some other Additional District Judge working with him at

Ferozepur. Appeal shall be decided as expeditiously as possible, in any event, within six months of the receipt of copy of this order.

6. Appeal allowed/case remanded.

7. Appeal allowed.