
(2002) 04 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3618 of 1999

Municipal Committee

APPELLANT

Vs

Shri Sukhdev Singh and Others

RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 134 PLR 394 : (2003) 2 RCR(Civil) 769

Hon'ble Judges : K.C. Gupta, J

Bench : Single Bench

Advocate : Mahavir Sandhu, for the Appellant; L.N. Verma, for Respondent Nos. 1 and 2 and Sanjeev Gupta, for Respondent Nos. 3, 4 and 6, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Gupta, J.—This revision petition has been directed by Municipal Committee, Rania, under Article 227 of the Constitution of India, for quashing the impugned judgment and decree dated 13.2.1995, Annexure P-3, passed by the Additional District Judge, Sirsa, whereby the appeal filed by respondents No. 1 and 2 against the judgment and decree dated 19.9.1994 Annexure P-2 was accepted in terms of the joint statement of respondents No. 1 to 6.

2. Briefly stated, the facts are that the petitioner-Committee is the owner of the land measuring 8 Kanals 3 Marias as detailed in paragraph 3 of the petition according to the Jamabandi for the year 1992-93, Annexure P-I. It was averred that petitioner-Committee came into existence in the month of March 1976 and continued upto 1987 when it was abolished vide notification dated 25.7.1987. Again vide notification dated 28.9.1992, the Municipal Committee, Rania, came into existence and the area of village Rania was declared as Municipal area and it started functioning from 30.12.1992 and since then it is continuously functioning as such.

It was further averred that respondent No. 1-Sukhdev Singh and respondent No.

2-Jar-nail Singh sons of Pritam Singh filed civil suit No. 673 of 1989 on 14.12.1989 for permanent injunction against private respondents No. 3 to 6 and the Gram Panchayat (pro-forma respondent No. 7), for restraining them from interfering in any manner into the ownership and possession of respondents No. 1 and 2 with respect to the land comprised in plot Nos.7 to 11 comprised in Khasra Nos. 110 and 123 situate within the revenue estate of village Rania and also further restraining them from creating any street whatsoever through the above mentioned land. The said suit was dismissed by the trial court vide judgment dated 19.9.1994 Annexure P-2. It was held that the street in question vested in the Gram Panchayat and respondents No. 1 and 2 had no right to retain a portion of the street which has been forcibly encroached upon by them. However, the Municipal Committee was not impleaded as a party, although it had come into existence vide notification dated 28.9.1992 and the land in question vested in the Municipal Committee.

It was further averred that dissatisfied with the judgment and decree dated 19.9.1994 Annexure P-2, respondents No. 1 and 2 filed an appeal on 22.9.1994 and in that appeal the private respondents No. 3 to 6 and respondents No. 1 and 2 effected a compromise and accordingly the suit was decreed vide judgment annexure P-3 on the basis of that compromise by making the site plan Annexure C-1 to be part of that decree. Thus, respondents No. 1 and 2 after joining hands with the private respondents succeeded to grab the land of the petitioner-Committee. So, the judgment and decree dated 13.2.1995 of the lower Appellate Court was liable to be set aside as the land in question vested in the Municipal Committee and respondents No. 3 to 6 had no right to compromise with respondents No. 1 and 2. With these allegations, the present revision petition was filed under Article 227 of the Constitution of India.

3. Respondents No. 1 and 2 filed written reply. They took a preliminary objection that revision petition under Article 227 of the Constitution of India was not maintainable as the petitioner had sought the quashing of the judgment Annexure P-3 dated 13.2.1995, passed by the Additional District Judge which could have been challenged by way of filing a regular second appeal in the High Court and the revision petition was wholly misconceived and not maintainable. They further stated that earlier Gram Panchayat Ra-nia, was the owner of the land in dispute and it sold the same to them (respondents 1 and 2) and at that time the Municipal Committee had not come into existence. Since, the Gram Panchayat had sold the area in dispute vide sale deed Ex.P-2 and Ex.P-3, so they became owners of the same. They further stated that Municipal Committee could not file the revision petition after an inordinate delay of 4 years and it was an abuse of the process of law.

4. On merits, they stated that the street passed alongside the plots on the Northern side as well as the Southern side but no street passed through the aforesaid plots.

5. I have heard Mr. Mahavir Sandhu, learned counsel for the petitioner, Mr. L.N.

Verma, learned counsel for respondents No. 1 and 2 and Mr. Sanjeev Gupta, learned counsel for respondents No. 3, 4 and 6 and carefully gone through the file.

6. It is an admitted fact that respondents No. 1 and 2 had filed a suit for permanent injunction about the property in dispute bearing No. 673 of 1989 on 14.12.1989 for permanent injunction against respondents No. 3 to 6 and the Gram Panchayat Rania (proforma respondent No. 7) for restraining them from interfering in any manner into the ownership and possession of the land being plots No. 7 to 11 comprised in Khasra Nos. 110 and 123 situate within the revenue estate of village Rania and further restraining them from creating any street whatsoever through the above said land. The said suit was dismissed vide judgment dated 19.9.1994 Annexure P-2 by holding that respondents No. 1 and 2 had encroached upon a portion of the street which was not owned by them and as such a trespasser in possession was not entitled to the injunction against a true owner. Dissatisfied with the said judgment, respondents No. 1 and 2 filed an appeal. However, in appeal a compromise took place between respondents No. 1 and 2 on one side and respondents No. 3 to 6 on the other side and accordingly, the appeal was accepted by the Additional District Judge, Sirsa. The Gram Panchayat was a party to that appeal but no compromise had taken place with it. Admittedly, Municipal Committee Rania, was not made a party. However, since by that time, the Municipal Committee Rania, had come into existence, so, it was incumbent upon part of the petitioner-Committee to file a regular second appeal stating that during pendency of the suit, the property in dispute had vested in Municipal Committee and since the Gram Panchayat was no longer in existence, so it was competent to file an appeal. Having not availed the remedy of filing regular second appeal, the Municipal Committee cannot be allowed to avail the extraordinary remedy available under Article 227 of the Constitution of India, in order to by-pass the law of limitation because the said petition was filed after a period of four years. However, in the regular second appeal, the petitioner could have moved an application u/s 5 of the Limitation Act for condonation of delay. Having not done so, the petitioner-Committee cannot be allowed to file a revision petition under Article 227 of the Constitution of India as equal efficacious remedy was available to it by way of filing regular second appeal. Otherwise also, a copy of the report of District Revenue Officer, dated 4.8.1998 shows that he had demarcated the suit property at the instance of the Collector and (found that there was no encroachment on the part of respondents No. 1 and 2 and plots No. 7 to 17 comprised in Khasra Nos.110/24/2, 123/4 were found to be correct in accordance with the record and were sold by Gram Panchayat Rania in the year 1969.

7. In view of the above discussion, I hold that filing of the present revision petition under Article 227 of the Constitution of India is an abuse of the process of Court and is not maintainable. Consequently, the revision petition is dismissed.