
(1985) 03 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 808 of 1984

Municipal Committee Sirhind

APPELLANT

Vs

Vijay Rani

RESPONDENT

Date of Decision : 20-03-1985

Acts Referred:

Citation : (1985) 2 CurLJ 263 : (1986) 1 LLR 498 : (1985) PLJ 509 : (1986) RRR 128

Hon'ble Judges : J.V.Gupta, J

Advocate : For the Appellants : D. V. Sehgal, Senior Advocate, with V.K. Kataria and B. R. Mahajan, Advocates, G. R. Majithia, Senior Advocate with Rahul Karwal, Advocate., Advocates for appearing Parties

Judgement

J.V. Gupta

1. The regular second appeal has been preferred by the Municipal Committee, Sirhind (briefly the Committee) against whom the suit for permanent injunction has been decreed by both the Courts below.
2. This appeal was admitted and was directed to be heard along with Civil Revision No. 2110 of 1984, Pawan Kumar v. Sukhwant Singh and others, which has been disposed of by me by a separate order dated March 14, 1985.
3. Shrimati Vijay Rani and Pawan Kumar Gupta, plaintiffs purchased the plot in dispute from its previous owner Ralla Singh, vide two registered sale deeds dated 25.6.1981 and 6.6.1981. Earlier Ralla Singh had filed Civil Suit No. 95 dated 31.1.1977 against the Committee which was decreed ex parte on 1.9.1977 in favour of the said Ralla Singh. In that suit, a finding was given that he was the owner in possession and therefore, the decree for permanent injunction was passed against the defendants, including the Committee. After the purchase, the plaintiff applied to the Committee for the sanction of the plan and also kept bricks in the suit property, but the Committee threatened that it will dispossess the plaintiff from the plot in dispute forcibly. Hence, the present suit.

4. The suit was contested by the Municipal Committee, alleging that Ralla Singh was not the owner of the suit property, nor was he in possession thereof. The Committee is the owner of the suit property and is in possession thereof. The decree dated 1.9.1977 passed in favour of Ralla Singh was alleged to be a nullity and not binding on the committee. The only issue framed in the suit was, whether the plaintiffs are the owners and in possession of the disputed plot, as alleged and whether they are entitled to the injunction prayed for ?

5. In the trial Court when the arguments were heard, the Committee moved an application dated 16.2.1983, under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the written statement. It was stated therein that the Committee be allowed to amend paragraph 2 of the written statement, so as to plead specifically that the decree in question, i.e. dated 1.9.1977 was a nullity, because the suit was filed against the Committee through its Executive Officer, but from the date of the institution of the suit till the date of the decree, there was no Committee in existence, as it had been superseded and an Administrator was appointed. The said application was contested on behalf of the plaintiffs. Ultimately, the trial Court, vide its detailed order dated 19.2.1983, dismissed the application with the observation that the application does not appear to have been made bona fide, but it appears to have been filed to delay the result of the suit. After dismissal of the said application, by a separate order, the plaintiffs' suit was decreed on merits after coming to the conclusion that the plaintiffs are owners in possession of the plot in dispute and are entitled to the injunction prayed for. In appeal, the learned Additional District Judge affirmed the said findings of the trial Court.

6. The order of the trial Courts declining the amendment of the written statement was also taken up before the lower appellate Court. The learned Additional District Judge found that the trial Court rightly dismissed the application as no amendment could be allowed which put to a disadvantageous position the plaintiffs and which displaced the case of the plaintiffs. Ultimately, the decree of the trial Court passed in favour of the plaintiffs was maintained. Dissatisfied with the same, the Committee has filed this second appeal in this Court.

7. The learned counsel for the appellant contended that the amendment should have been allowed by the trial Court, as it was necessary to determine the real controversy between the parties. According to the learned counsel, a plea was already taken in the written statement that the ex parte decree dated 1.9.1977 was a nullity. By virtue of the amendment, only the reasons were to be pleaded and therefore, it was a fit case, where the amendment should have been allowed. In support of this contention, a reference was made to *Jai Ram Manohar Lal v. National Building Material Supply*, AIR 1969 S.C. 1267 and *Ishwardas v. The State of Madhya Pradesh*, AIR 1979 S.C. 551. It was further contended that Ralla Singh filed the suit on 31.1.1977, the Committee had already been superseded in the year 1973 and continued as such upto 1979 when it was

reconstituted. Thus, argued the learned counsel, since the Administrator was never made a party to the suit, any decree against the Committee, without impleading the Administrator as a party to the suit, was a nullity. Since Ralla Singh did not produce his title deeds and the Courts below have decided the suit in favour of the plaintiffs, mainly relying upon the ex parte decree, which, according to the learned counsel, was a nullity, the suit was liable to be dismissed. In support of the second contention, he referred to *Hitkarini Sabha v. Corporation of the City of Jabalpur*, AIR 1961 M.P. 324, *Administrator, Lahore Municipality v. Siraj Din*, AIR 1938 Lahore 83 and *Administrator, Lahore Municipality v. Daulat Ram Kapur*, AIR (29) 1942 Federal Court 14.

8. I have heard the learned counsel for the parties and have also gone through the relevant evidence on the record and the case law cited at the Bar.

9. It is true that in the written statement it was pleaded that the ex parte decree was a nullity and therefore, under these circumstances, the amendment of the written statement sought for by the defendant Committee could be allowed. In any case, assuming that the Committee was superseded in the year 1973 as claimed by the Committee and was revived in the year 1979, the question remained as to whether the ex parte decree dated 1.9.1977 passed in favour of Ralla Singh against the Committee was a nullity, or not. In this respect reference was made to section 238(4)(d) of the Punjab Municipal Act which provides that when a Committee is suspended or superseded, the property vesting in the Committee shall, till the Committee remains suspended or is reconstituted, as the case may be, vest in the State Government. There cannot be any dispute with this proposition. In the present case, the Committee was sued through its Executive Officer. Admittedly, the standing counsel for the Committee appeared in the suit, but for the reasons best known to it, he absented himself subsequently and allowed the proceedings to be taken ex parte. No objection whatsoever was ever taken by the Executive Officer or the standing counsel for the Committee to this effect that the Committee stood superseded and therefore, the Administrator be made a party to the suit. Not only that in the subsequent suit filed on 4.10.1978 by Ram Asra challenging the said ex parte decree, the Committee did appear, but it did not raise any objection whatsoever that the ex parte decree was a nullity on that account. The suit filed by Ram Asra was for a declaration to the effect that the Committee was the owner in possession of the plot and Ralla Singh had no connection with the said plot and that the ex parte decree dated 1.9.1977 obtained by Ralla Singh against the Committee and others, is collusive, illegal, null and void and not binding upon the rights of the Committee. In that suit, the written statement was filed on behalf of the Committee. The certified copy thereof is Ex. RX 4 in the other file, i.e. Civil Revision No. 2110 of 1984, *Pawan Kumar & another v. Sukhwant Singh & others*. Therein the Committee admitted that Ralla Singh filed the suit against it, but it was denied that the suit was filed in collusion with it. No such objection was taken therein that the said ex parte decree was a nullity as the Administrator was not made a party thereto. Moreover, even if the Administrator was not made

a party to the suit and the suit was brought against the Committee through its Executive Officer, as contemplated by section 18 of the Punjab Municipal Act, the ex parte decree could not be said to be a nullity on that account alone. At the most, it could be said to be an irregularity which could be cured had an objection been taken by the Committee in the suit. In a somewhat similar situation, the matter came up before the Federal Court in Daulat Ram Kapur's case (supra), where the suit was filed by the Administrator, because the Committee was superseded. Therein the provisions of section 18 of the Punjab Municipal Act were considered and it was observed as under :

"The provisions of S. 18, Punjab Municipal Act, relating to the corporate character of the Committee and the manner of suing must be read subject to the provisions of S 238(2) which lays down the consequences of a supersession. It may be (as held in 29 Mad, 53(1) that a supersession has not the effect of a dissolution and that when another Committee is constituted in the place of the superseded Committee, it is a revival of the old corporation and not the creation of a new one. But during the period when the order of supersession is in force, the statute makes it clear that all the members of the Committee vacate their seats and that all the powers and duties of the Committee are to be exercised and performed by the Administrator. It seems to us that we should be carrying the legal fiction to a needless length if we insisted that even in this state of facts, proceedings must be taken only in the name of the dormant corporation. It has not been disputed that the person competent to take proceedings is the Administrator; and even if the true view should be that he should take proceedings in the name of the Committee, the defect is one purely of a formal character which can be cured by amendment."

Thus, it could not be successfully argued on behalf of the appellant Committee that the ex parte decree was a nullity on that ground. The judgments relied upon by the learned counsel for the appellant have no applicability to the facts of the present case and are clearly distinguishable. In this view of the matter, the question of allowing the amendment becomes irrelevant.

10. Before parting with this judgment, it may be observed that in this case, the Executive Officer of the Committee, at the time when Ralla Singh filed the suit on 31.1.1977 and the standing counsel of the Committee at that time, as well as the standing counsel of the Committee at the time when Ram Asra filed the suit in the year 1978, did not perform their duties diligently and honestly. It will be in the interest of the Committee to take appropriate action against the said persons.

11. Consequently, the appeal fails and is dismissed with costs.