
(2010) 10 P&H CK 0301

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3428 of 2010 (O and M)

Pana Thola Hindwan Kharkhoda

APPELLANT

Vs

Municipal Committee and Others

RESPONDENT

Date of Decision : 15-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Haryana Municipal Act, 1973 — Section 52
Punjab Village Common Lands (Regulation) Act, 1961 — Section 13

Citation : (2011) 162 PLR 692

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—This is Plaintiff's second appeal challenging the judgment and decrees of the courts below whereby suit of the Appellant for declaration with consequential relief of permanent injunction was dismissed.

2. As per the averments, Appellant is the owner of the suit land, which was wrongly mutated in the name of Gram Panchayat, Kharkhoda vide mutation No. 2853 and thereafter the suit land was wrongly vested in Municipal Committee through mutation No. 3771 and the aforesaid mutations being wrong and illegal were liable to be set aside. It was further averred that the Appellant was proprietor of the Pana Thola Hindwan Kharkhoda and his name was recorded in the "Asmai Malkan".

3. The suit was contested by Respondents No, 1 and 2 raising various preliminary objections like maintainability, locus standi and jurisdiction of the civil court, etc. On merits, it was submitted that the suit land was owned by Gram Panchayat and after creation of Municipal Committee, Kharkhoda, the suit land vested in the municipality. The suit land was being used for common purposes of the inhabitants. It was further stated that Municipal Committee has filed the suit under the provisions of Public Premises Act before the Collector, Sonapat for

vacation of unauthorised possession of the suit land and Municipal Council, Kharkhoda had taken the possession of the suit property in execution proceedings after adopting due process of law. All other averments of the plaint were denied and dismissal of the suit was prayed for.

4. Defendants No. 3 and 4 filed written statement stating that land in dispute vest in Pana Thola Hindwan and proprietors of Pana Thola Hindwan were the owners of the land in dispute which was used for the common purposes of the village.

5. From the pleadings of the parties, the following issues were framed:

1. Whether the proprietors of Pana Thola Hindwan are owners in possession in the disputed land as alleged in para No. 2 of the plaint? OPP

2. Whether the land in dispute was used for common purposes of the inhabitants of the village, if so, to what effect? OPP

3. Whether the mutations bearing No. 2853 and 3771 sanctioned in the name of the Defendants-Municipal Committee are illegal and in violation of the standing order of the Financial Commissioner? OPP

4. Whether the suit of the Plaintiff is not maintainable in the present form? OPD

5. Whether the suit of the Plaintiff is wrong and void under Order 1 Rule 8 CPC OPD

6. Whether the Plaintiff has no cause of action to file the present suit? OPD

7. Whether the suit of the Plaintiff is liable to be dismissed for want of mandatory notice as required u/s 52 of the Haryana Municipal Act, 1973? OPD

8. Whether the principle of sub-judice applies in the case of the Plaintiff? OPD

9. Whether the civil court is barred to try and entertain the present suit? OPD

10. Whether the Plaintiff is stopped by his own act and conduct to file the present suit? OPD

11. Relief.

6. The trial Court after appreciating the evidence led on the record and hearing the learned Counsel for the parties, dismissed the suit of the Plaintiff with no order as to costs vide judgment and decree dated 14.09.2009.

7. Feeling aggrieved from the findings of the trial court, the Plaintiff filed an appeal before the Lower Appellate Court, which was also dismissed. While dismissing the appeal, the Lower Appellate Court held that Civil Court has no jurisdiction to entertain the civil suit filed by the Appellant/Plaintiff.

8. Still not satisfied, the Plaintiff has filed the instant appeal challenging the judgment and decrees of the courts below.

9. I have heard learned Counsel for the Appellant and perused the impugned judgment and decrees of the courts below.

10. In the present case, the matter in controversy revolves around the fact as to whether land vests or does not vests in Panchayat under the provisions of Punjab Village Common Lands(Regulation), Act 1961 (hereinafter referred to as Act of 1961). In the case of Bihari Singh and Ors. v. Gram Panchayat and Anr. (2002-2) 131 PLR 455, this Court has held that once in terms of pleadings of the parties matter in controversy pertains to the fact that suit land vests or does not vests in a Panchayat under the provisions of Act, 1961, the said question is to be determined by the authorities under the aforesaid Act and the said dispute cannot be entertained by civil court in view of statutory bar as envisaged u/s 13 of the Act of 1961. Learned Counsel for the Appellant was unable to challenge the aforesaid settled proposition of law as aforesaid.

In this view of the matter, I find no merit in this appeal.

No substantial question of law arises.

Dismissed.