
(2003) 10 P&H CK 0080

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 869 of 1984

Rachhpal Singh

APPELLANT

Vs

Administrator and Executive Officer of Superseded Panchayat
Samiti, Rurka Kalan, Distt.Jalandhar and another

RESPONDENT

Date of Decision : 22-10-2003

Acts Referred:

Citation : (2004) 1 RCR(Civil) 563

Hon'ble Judges : Viney Mittal, J

Advocate : Shri Rajive Bhalla, Advocate., Advocates for appearing Parties

Judgement

Viney Mittal, J.

1. During the course of arguments, following questions of law have arisen for consideration in the present appeal :

(a) As to whether the suit filed by the plaintiff could be dismissed only on the ground that the same had been filed against Panchayat Samiti, Rurka Kalan when the same stood already superseded ?

(b) As to whether it was not required of the Court to ask the plaintiff to implead the proper parties when the aforesaid fact had come to the notice of the Court ?

(c) As to whether no objection having been taken by the defendants in their written statement was it open to them to challenge the judgment of the trial Court while filing the appeal before the learned first appellate Court on the question that defendant No. 2 stood already superseded ?

2. Certain facts be noticed :

Rashpal Singh, plaintiffappellant filed a suit for declaration to the effect that the order dated January 30, 1980 passed by the Executive Officer, Panchayat Samiti Rurka Kalan, District Jullundur was illegal, bad and without jurisdiction and not binding on the rights of the plaintiff. He challenged the aforesaid termination order while claiming that he was appointed as a Panchayat Secretary by the

Chairman Panchayat Samiti Rurka Kalan vide order dated August 10, 1978 in accordance with the rules applicable to him. He claimed that his services had wrongly been terminated.

3. The suit was contested by the defendants. The defendants maintained that the order of termination was legal and valid.

4. The learned trial Court, on the basis of evidence led by the parties, decreed the suit of the plaintiff and held that an order dated January 30, 1980, whereby the services of the plaintiff had been terminated, was illegal and bad and, as such, not binding on him.

5. Defendant No. 2 felt aggrieved. An appeal was filed before the learned first appellate Court through the Administrator and Executive Officer of Superseded Panchayat Samiti. In the appeal, it was claimed that the aforesaid Panchayat Samiti stood superseded prior to the filing of the suit on May 29, 1980 and as such the suit had been filed against the Superseded Panchayat Samiti. The aforesaid appellant further claimed that proper parties had not been impleaded in the suit and, as such, the suit was not maintainable and accordingly decree passed by the learned trial Court was liable to be set aside.

6. The learned first appellate Court accepted the aforesaid plea and on that limited question held that suit filed by the plaintiff against the Superseded Panchayat Samiti, defendant No. 2 was not maintainable and, as such, accepted that appeal filed by the aforesaid appellant and dismissed the suit filed by the plaintiff.

The plaintiff has now chosen to file the present appeal.

7. Shri Rajive Bhalla, the learned counsel for the appellant has argued that in fact no such objections have been taken by the defendants in their written statement which had been taken by them before the learned first appellate Court. On that basis, it is further maintained by Shri Bhalla that had any such objections been taken in the written statement, then appropriate amendment could have been made and necessary party could have been impleaded by the plaintiff during the course of proceedings before the learned trial Court.

8. It is further maintained by Shri Bhalla that in any case even if the learned first appellate Court has come to the conclusion that proper parties were not impleaded in the suit, still an opportunity should have been granted to the plaintiff to implead the proper parties and thereafter proceedings could have been taken afresh.

9. I have given my thoughtful consideration to the various pleas raised by the learned counsel for the appellant and in my opinion the present appeal is liable to be accepted.

10. A perusal of the judgment of the learned trial Court and the pleadings contained in the written statement support the contentions raised by the learned

counsel for the appellant. No objection with regard to nonexistence of defendant No. 2, Panchayat Samiti was taken in the written statement. No such issue was ever framed. It was never brought to the notice of either the Court or the plaintiff that the aforesaid defendant No. 2 was not in existence.

11. In these circumstances, the learned trial Court decreed the suit.

12. A fresh plea of fact had been taken for the first time before the learned first appellant Court. The aforesaid plea, even if accepted, required necessarily that an opportunity should have been granted to the plaintiff to implead the proper parties and thereafter to proceed with the suit in accordance with law. This course has not been adopted by the learned first appellate Court.

13. In this view of the matter, I have no hesitation in answering the questions (a), (b) and (c) in favour of the plaintiffappellant. Accordingly, the present appeal is allowed. In the peculiar facts and circumstances of the case, the judgments and decree of both the Courts below are set aside and the matter is remitted back to the learned trial Court for decision afresh in accordance with law. The plaintiff would be at liberty to implead the proper parties. Thereafter the learned trial Court shall proceed with the suit in accordance with law. There shall be no order as to costs.