
(2011) 05 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1980 of 2009 (O and M)

Ram Kishan

APPELLANT

Vs

Gram Panchayat, Dhobra and Others

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Citation : (2011) 163 PLR 409

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

L.N. Mittal, J.

CM No. 5840.C of 2009

For the reasons mentioned in the application which is accompanied by affidavit, delay of 49 days in refiling the appeal is condoned.

RSA No. 1980 of 2009

1. Plaintiff Ram Kishan who was successful in the trial court but has been non-suited by the lower appellate court has filed the instant second appeal.
2. Plaintiff-appellant filed suit against Gram Panchayat defendant No. 1 and its six Members Panchayat as defendants No. 2 to 7 (including respondents 2 and 3 herein). However, trial court judgment reveals that except defendant No. 1-Gram Panchayat, suit against other defendants was dismissed as withdrawn.
3. Plaintiff is owner of Haveli as depicted by letters ABCD in site plan Ex. PI. There is drain for discharge of waste water along wall BC of the plaintiffs Haveli flowing from north to south. The plaintiffs grievance is that there is no provision for further flow of the waste water beyond point C with the result that the dirty water accumulates near his Haveli and is causing damage to the Haveli. Accordingly, the plaintiff sought direction to defendant No. 1-Gram Panchayat to

lay pipes for further flow of the dirty water under the phirni from point C to point E and to construct drain from point E to point F. The plaintiff also sought injunction restraining defendants from accumulating water in the phirni on southern side of plaintiff's Haveli.

4. Defendant No. 1 along with some other defendants in the written statement admitted existence of plaintiff's Haveli and also drain from point B to point C for passage of dirty water. It was, however, pleaded that pipes were laid from point C to point E a couple of times by the Gram Panchayat but due to heavy traffic, the pipes got broken and the purpose of laying the pipes was defeated for proper drainage of water. The Gram Panchayat intended to construct pucca drain on southern side of the Haveli of the plaintiff from east to west because laying of pipes from point C to point E was not practicable. Various other pleas were also raised.

5. Learned Civil Judge (Junior Division), Pathankot vide judgment and decree dated 10.12.2003 decreed the plaintiffs suit. However, first appeal preferred by defendant Gram Panchayat has been allowed by Additional District Judge, Gurdaspur vide judgment and decree dated 25.10.2008 and thereby suit filed by the plaintiff stands dismissed. Feeling aggrieved, the plaintiff has filed the instant second appeal.

6. I have heard learned counsel for the parties and perused the case file.

7. It has come from the version of both the sides that the grievance of the plaintiff is genuine. Waste water flowing in drain depicted by letters BC gets accumulated near the plaintiffs Haveli thereby causing damage to it. It is statutory duty of the defendant-Gram Panchayat to provide solution to this grievance of the plaintiff. Even defendant-Gram Panchayat has admitted this factual position and pleaded that it intended to construct drain on southern side of plaintiffs Haveli running from east to west. However, no such drain has been constructed although suit was instituted more than 15 years ago. Learned counsel for the plaintiff appellant states that the plaintiff has no objection if any such drain is constructed so that water does not get accumulated near the Haveli of the plaintiff.

8. Learned counsel for the Gram Panchayat contended that funds required for constructing the drain have to be provided and plan has to be sanctioned by government authorities. It was also contended that admittedly pipes were laid under the phirni from point C to point E but the same got broken due to heavy traffic.

9. The defendant-Gram Panchayat cannot abdicate its statutory duty to construct drain or lay pipes for making proper arrangement for discharge of the waste water which gets accumulated near the Haveli of the plaintiff and thereby causes damage to the Haveli. In the written statement dated 25.3.1996 i.e. filed more than 15 years ago, it was pleaded that Gram Panchayat intended to construct drain from east to west towards south of the plaintiffs Haveli for flow of the

waste water but in spite of lapse of 15 years nothing has been done. Defendant has constructed drain towards east of the plaintiffs Haveli from point B to point C for flow of waste water from north to south and on account thereof the water gets accumulated near the Haveli of the plaintiff causing damage to it is, therefore, duty of the defendant-Gram Panchayat to make proper arrangement for further flow of the said water so that it does not get accumulated there and does not cause damage to the plaintiffs Haveli.

10. For the reasons aforesaid, I find that necessary direction has to be issued to Gram Panchayat to remedy the aforesaid grievance of the plaintiff-appellant. Substantial question of law arises for adjudication in the instant second appeal as to whether the defendant is duty bound to remove the aforesaid grievance of the plaintiff in the facts and circumstances of the case. The said question is answered in favour of the plaintiff-appellant for the reasons recorded hereinbefore.

11. Accordingly, the instant second appeal is allowed. Judgment and decree of the lower appellate court are set aside. Judgment and decree of the trial court are modified. Plaintiffs suit is decreed to the extent that defendant-Gram Panchayat is directed to make arrangement for further flow of waste water which accumulates near the plaintiffs Haveli so that the same does not accumulate mere. The needful be done within one year from today.