
(1976) 04 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1482 of 1965

Rup Chand

APPELLANT

Vs

Gram Panchayat, Pakho Kalan

RESPONDENT

Date of Decision : 26-04-1976

Acts Referred:

Citation : (1977) PLJ 77 : (1985) RRR 539

Hon'ble Judges : S.P.Goyal, J

Advocate : Mr. Arun Nehra, Advocate., Advocates for appearing Parties

Judgement

S.P. Goyal, J.

1. This second appeal by the plaintiff is directed against the judgment and decree of the learned Senior Subordinate Judge, Barnala, dated August 9, 1965, whereby the judgment and decree of the trial Court dismissing the suit of the plaintiff was confirmed.

2. The Gram Panchayat of village Pakho Kalan issued a notice to the plaintiff on February 16, 1964, to vacate the possession of the site in dispute within five days. The plaintiff instituted the suit to challenge the validity of the said notice and for permanent injunction restraining the respondent from demolishing the buildings and interfering with his possession. The suit was contested by the respondent and the allegations made in the plaint were controverted. It was further pleaded that the suit was liable to be dismissed for nonservice of the notice under section 108 of the Gram Panchayat Act. The jurisdiction of the civil Court to try the suit was also challenged. On the pleading of the parties, following issues were framed :

1. Whether the suit is maintainable without service of notice under section 108 of the Gram Panchayat Act ?

2. Whether the plaintiff is the owner of the house in dispute ?

3. If issues Nos. 1 and 2 are proved, whether the plaintiff is entitled to the

injunction prayed for ?

4. Relief.

3. Issue No. 1 was decided in favour of the plaintiff and the remaining issues against him. The suit was consequently dismissed. Having failed in the appeal also, the plaintiff has come up in this second appeal.

4. The learned counsel for the appellant has challenged the correctness of the decision of the lower appellate Court on issue No. 2 on the ground that the land in dispute was not a public place within the meaning of this word as defined in section 3(k) of the Punjab Gram Panchayat Act, 1952, (hereinafter called the Act and as such the Gram Panchayat had no jurisdiction to issue notice under section 21(1) of the Act. In support of his contention, the learned counsel has relied on a Division Bench decision of this Court in Nagar Panchayat Village Sangatpura, Tehsil Jind, District Sangrur v. Mithun and others (L.P.A. No. 419 of 1958 decided on February 15, 1961).

5. It is not disputed that the plot in dispute was in possession of the appellant since several years before the impugned notice was issued by the Gram Panchayat and he had built a room thereon in which he was carrying on his business. Public places, as defined in section 3(k) of the said Act means any place, building or construction situate within the jurisdiction of Gram Panchayat area to which the public has free access. It is, therefore, evident that the site in dispute is not covered by the words "public place" as defined in the Act. On similar facts the Division Bench in the abovenoted case held that the site in dispute was not a public place within the meaning of section 3(k) of the said Act, and, therefore, the Gram Panchayat had no jurisdiction to issue notice under section 21(1)(a) of the Act.

6. This appeal is consequently allowed, the judgment and decree of the lower appellate Court set aside and the suit decreed but without any order as to costs.