
(2011) 07 P&H CK 0237

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 367 of 2009 (O and M)

Shamsher Singh

APPELLANT

Vs

Gram Panchayat, Jhinverheri and Others

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
Land Acquisition Act, 1894 — Section 19, 4, 6

Citation : (2012) 4 RCR(Civil) 238

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Advocate : Saurabh Bajaj, for the Appellant; Tanisha Peshawaraia, Dy. Advocate General, Haryana, for the Respondent

Judgement

1. Kanwaljit Singh Ahluwalia, J.-By this common judgment RSA No. 4685 of 2009 titled as "Shamsher Singh v. Gram Panchayat, Jhinverheri and others" and RSA No. 367 of 2010 titled as "Shamsher Singh v. State of Haryana through Collector Kurukshetra and others" shall be decided together. The lower appellate Court had decided Civil Appeal No. 100 of 2008 preferred by appellant-Shamsher Singh and Civil Appeal No. 119 of 2008 preferred by the State of Haryana through Collector Kurukshetra vide a common judgment dated 31st August, 2009. RSA No. 4685 of 2009 has been preferred against the decision in Civil Appeal No. 100 of 2008, whereas RSA No. 367 of 2010 challenging the decision in Civil Appeal No. 119 of 2008.

2. Appellant-Shamsher Singh had instituted a suit for permanent and mandatory injunction. It was prayed in the suit that Gram Panchayat, Jhinverheri, Tehsil Pehowa, District Kurukshetra; State of Haryana through Collector Kurukshetra; SDO, PWD (B&R), Pehowa; Range Forest Officer, Pehowa; and Block Development and Panchayat Officer, Pehowa be restrained by issuing a permanent injunction from raising further construction of Nullah (drain) in the land of the plaintiff and the defendants be further restrained from removing

Safeda (eucalyptus) trees standing in the suit land and further a mandatory injunction be issued directing defendants to the suit to remove the illegal encroachments which they had made by constructing incomplete Nullah (drain). It was pleaded in the suit that the appellant-plaintiff was recorded as a co-owner being the co-sharer of agricultural land measuring 262 Kanals 6 Marias comprised in Khewat No. 2 Khatoni No. 3 min, total kittas 37 (whole Khewat) situated in village Jhinverheri, Tehsil Pehowa, District Kurukshetra, vide jamabandi for the year 1997-98. It was stated that the appellant-plaintiff was recorded as a co-sharer in possession of the suit land and he was in exclusive possession of Khasra numbers 19/1, 24/1 and 25/1. The southern portion of these Khasra numbers is the suit land having a width of 16.9 feet in west side and 4 feet in east side with a length of 616 feet. It was further stated that the respondent-defendants have no concern with the suit property. Gram Panchayat, Jhinverheri being inimical had passed a resolution for constructing the Pucca Nullah (drain) for discharge of the dirty water including sewer water of the village in the pond situated near Ban Jhinverheri. The appellant-plaintiff had earlier filed a suit in the Court of Mr. R.P. Goyal, Additional Civil Judge (Senior Division), Pehowa seeking permanent injunction against the defendants restraining them from constructing the said Nullah. The application for ad-interim injunction filed by the appellant-plaintiff under Order 39 Rules 1 and 2 read with Section 151 CPC was dismissed on 24th December, 2002. However, the suit was pending and after dismissal of the application for injunction, the defendants along with the official machinery came to the spot on 29th December, 2002 and started digging the Nullah and raising construction of the same in the land of plaintiff and other co-sharer on war footing. On the request made by the appellant-plaintiff that the defendants have got no concern whatsoever with the land owned and possessed by him as a co-sharer and they have no right to construct Nullah in the portion of suit land, the defendants totally refused to admit the claim of the appellant-plaintiff and asserted that his application for ad-interim injunction has been dismissed and the Gram Panchayat, Jhinverheri has received a grant from the Government and therefore, they have every right to construct the Nullah in the said land. It was further stated that construction of Nullah is going on and has not completed, therefore, the defendants have not started discharging the dirty water through this Nullah to the pond of the village, as this will create nuisance and will also pollute village Jhinverheri.

3. Upon notice, defendant No. 1-Gram Panchayat, Jhinverheri appeared and filed reply wherein it raised a preliminary objection that the plaintiff and his associates had been obstructing the public development work of the Gram Panchayat and in the earlier suit the plaintiff had admitted that the said Nullah is being built upon the PWD road and in that suit a specific plea was raised by the plaintiff that for constructing the Nullah, permission was sought from PWD and furthermore, the Nullah has been constructed in the PWD land and not in the land of plaintiff.

4. A joint written statement was filed by defendants No. 2 and 3. They denied the averments made in the plaint and on merits in para No. 2 of the written

statement, took a definite stand, which reads as under:

2. That the contents of the para 2 of the plaint are wrong and not admitted. Moreover, it is requested that the land in Killa No. 19/1 of Rectangle No. 21 and Killa No. 25/1 of Rectangle No. 22 has been acquired as mentioned in the Khewat No. 77 Khatoni No. 257 of Jamabandi for the year 1997-98 after making the payment of compensation not under the possession of the applicant. As regards Killa No. 24/1 of Rectangle No. 22 it is submitted that the land for the construction of road has not been acquired due to curve in the road.

5. Defendant No. 4-Range Forest Officer, Pehowa filed a separate written statement. On merits, he also took a definite stand, which reads as under:

10. That para No. 10 of the plaint is wrong and denied. It is submitted that the Forest Department had planted the Safeda and Kikkar trees in the berm of Jhinverheri-Satora Road between Km. 1-3 in the Right Side in the year 1987-88 and the plaintiff raised no objection at that time. A photocopy of the cash book, showing the expenditure made by the Forest Department on the plantation on the said road, is attached as Annexure D-1, It is further submitted that the Jhinverheri-Satora road has been declared as a Protected Forest by the Haryana Government vide its Notification No. S.O.82/C.A. 16/27/S.29/79 dated 6/7/1979, copy of which is attached as Annexure D-2. The Forest Department, Haryana is looking after the trees in question since the time of plantation. The trees are also in the possession of the Forest Department, Haryana since the time of plantation.

6. The trial Court, after completion of pleadings had drawn the following issues:

1. Whether the plaintiff is co-owner of the suit land as detailed in para No. 1 of the plaint? OPP

2. Whether the suit of the plaintiff is not maintainable in the present form? OPD

3. Whether the plaintiff has no locus standi and cause of action to file and maintain the present suit? OPD

4. Whether the suit is bad for want of notice? OPD

5. Whether the jurisdiction of civil Court is barred? OPD

6. Whether the suit of the plaintiff is liable to be dismissed because of concealment of true and material facts? OPD

7. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD

8. Relief.

7. The trial Court decided issue No. 1 partly in favour of the plaintiff. The Court held that there is a Notification dated 6th July, 1979 of the Haryana Government whereby the Forest Department, Haryana has been held to have grown the trees on the Jhinverheri link road and this Notification was not challenged. Therefore,

the trees have been planted by defendant No. 4 on the land of plaintiff and thus, the trees are drawing their support and sustenance from the land belonging to the plaintiff but have been planted by the Government Department. Therefore, the Court directed the Forest Department to give 30 percent share of wood or price thereof to the owner of the land i.e. the plaintiff. The trial Court further held that Nullah has already been constructed over the suit property and this fact has not been disputed. Issues No. 2 to 7 were not pressed by the defendants, therefore they were decided against them. The Court decreed the suit partly with costs and defendant No. 4-Range Forest Officer, Pehowa was directed to give 30 percent of the wood or price thereof to the plaintiff.

8. As stated earlier, the judgment of the trial Court was assailed by filing two separate appeals one by the State of Haryana and defendants to the suit and the other by the plaintiff. The lower appellate Court after hearing counsel for the appellants held as under:

11. Learned counsel for the appellant-Shamsher Singh in case of Shamsher Singh v. G.P. etc, Shri S.K. Sawhney has argued that the land belonging to appellant comprised in khasra No. 25/1/1, 19/1/1 and 21/1/1 have not been acquired by the Government. The Government had constructed a nalla on that land, while learned Govt. Pleader has stated that the entire land has been acquired by the Government and appellant Shamsher Singh has received the payment of acquired land vide document Ex.D-9 in the statement u/s 19 of the Land Acquisition Act. There is name of Shamsher Singh and name of his father Dayala that their land comprised in khasra No. 19/1/1, 24/1 and 25/1/1 have been acquired. In the notification dated 31.3.1986 Ex.D-5, these numbers have been mentioned. Vide Ex.D-9, the copy of payment C.C. Voucher dated 9.3.1987, it is am-, ply proved that for the acquired land mentioned in award dated 9.3.1987 Ex.D-7, Shamsher Singh and his father Diyala have been adequately compensated by Land Acquisition Collector. Even if some numbers have been left, for which, compensation has not been given by the Land Acquisition Collector, then the appellant Shamsher Singh is at liberty to move to the office of Land Acquisition Collector within one month from the passing of this judgment. Hence nothing remained to be adjudicated more and since the Government has become owner of the land, on which, trees are standing, which were grown by the Forest Department. Hence, the Government/Forest Department is not entitled to pay any compensation to the appellant Shamsher Singh regarding wood or price of the trees. The appellant Shamsher Singh has received due compensation for the land, which was acquired by the Government. Now he is not the owner of the land, rather, it is the Government/Forest Department, which is the owner of the land in question, on which, the trees were planted by the Forest Department. Hence, findings of the learned trial Court on issue No. 1 are reversed.

9. As a result thereof, the appeal filed by the plaintiff, viz. Civil Appeal No. 100 of 2008 was dismissed and the one filed by State of Haryana, viz. Civil Appeal No.

119 of 2008 was accepted. Hence, two regular second appeals have been filed in this Court by the plaintiff, one against dismissal of his appeal and the other against acceptance of the appeal preferred by the State.

10. The crucial issue for consideration of this Court is as to whether the land comprised in Khasra No. 19/1 and 25/1 was acquired by the State or not. The claim of the appellant is based solely on the jamabandi for the year 1997-98. Mr. Saurabh Bajaj, Advocate appearing on behalf of the appellant has urged that post-acquisition in the jamabandi recorded later-on, the appellant-plaintiff and others have been recorded to be the owners of three Khasra numbers in dispute, i.e. 19/1, 24/1 and 25/1. It is further stated that as per this jamabandi, the plaintiff and his co-sharers are recorded in possession of these Khasra numbers. Learned counsel has submitted that had by way of the Notification dated 19th December, 1984 issued u/s 4 of the Land Acquisition Act and Notification dated 31st March, 1996 issued u/s 6 of the Act, these Khasra numbers been acquired then in the subsequent jamabandi, entry should have been the other way. Counsel for the appellant has placed reliance upon Ex.D1 to say that the payment of compensation has been received by the plaintiff.

11. P.K. Aggarwal, Sub Divisional Engineer, Provincial Sub Division No. 1, PWD B&R, Branch Pehowa appeared as DW-2 and tendered his affidavit in examination in-chief as DW2/A. He further stated in categorical terms that defendant No. 1-Gram Panchayat, Jhinverheri had got constructed the Pucca Nullah in the length of 30 meters in the land of PWD without getting the prior approval from the competent authority and that a notice was issued to the Gram Panchayat not to construct the Pacca drain and not to damage the road without prior approval of the competent authority. Thereafter, approval was granted to defendant No. 1-Gram Panchayat, Jhinverheri vide letter No. 10642 dated 22nd November, 2002. It was further stated by him that the land comprised in Killa No. 19/1 of Rect. No. 21 and Killa No. 25/1 of Rect. No. 22 has been acquired after making payment of compensation and the suit land is not in possession of the applicant. He further stated that Killa No. 24/1 of Rect. No. 22 has not been acquired.

12. There is no challenge to the testimony of P.K. Aggarwal, DW-2. In view of the testimony of this witness, I am not inclined to disturb the findings returned by the lower appellate Court, especially when counsel for the appellant-plaintiff has failed to show any document from which it can be inferred that the land was not acquired. There is no merit in both the present appeals, especially when no question of law much less a substantial one has been raised for consideration of this Court, hence the same are dismissed.