
(2008) 05 P&H CK 0093

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4214 of 2007

Sukhbir Singh

APPELLANT

Vs

Gram Panchayat, Village Allarh Pind

RESPONDENT

Date of Decision : 30-05-2008

Acts Referred:

Citation : (2009) 3 LLR 230 : (2009) 2 RCR(Civil) 534

Hon'ble Judges : T.P.S.Mann, J

Advocate : Mr H.S. Dhindsa, Advocate. Mr. Arun Bansal, Advocate., Advocates for appearing Parties

Judgement

T.P.S. Mann, J.

1. Aggrieved of the judgments and decrees passed by learned lower Courts, whereby his suit for permanent injunction stands dismissed, the plaintiff has filed the present second appeal under Section 100 of the Code of Civil Procedure.

2. The claim of the plaintiff as taken by him in the plaint was that site bearing No. 36 min denoted in marks `ABCDE" in the site plan and bounded on the North by Phirni, on the South by property of Amru etc., on the West by his own property and his brotherJasbir Singh, while on the East by property of Jasbir Singh, situated in village Allarh Pind was owned and possessed by him and his brother Jasbir Singh. Both of them were in exclusive possession of the same. They had purchased the site in question for a sum of Rs. 1000/ from one Dhian Singh vide registered sale deed dated 24.8.1973 and since then they are owners in possession of the same. On the other hand, defendant Gram Panchayat had no concern over the suit property, but was threatening to interfere in the peaceful, actual and physical possession of the plaintiff and his brother, for the reason that Sarpanch was inimical towards him due to partyfaction. The plaintiff had asked defendantGram Panchayat not to interfere in his possession and that of his brother, but it had no effect. Accordingly, he filed suit for permanent injunction so as to restrain defendantGram Panchayat from interfering in any manner whatsoever in the peaceful, actual and physical possession of his and his brother.

3. Upon notice, written statement was filed by the Gram Panchayat, wherein it was pleaded that the plaintiff had no cause of action or locus standi to file the suit. He had not come to the Court with clean hands. He concealed the actual facts as existing at the spot in respect of the suit property. The site plan filed by him was wrong. He was a head strong person and wanted to usurp the public passage, falling on the Western side of plot No. 36. At the time of partition of the country, all the residents of the village migrated. The entire Abadi Deh i.e. plots, residential houses etc. became evacuee property, including the suit property. In the year 1953, the entire evacuee property was divided into plots, numbered as 1 to 36. Plots No. 1 to 33 were allotted to various allottees, who came from Pakistan. Plot No. 36, wherein the alleged suit property was shown was, kept reserved for common purposes. The suit property fell within lal lakir. Streets had been carved out. The site plan was prepared on the pattern of model town. On the Western side of plot No. 36, there was a passage of 16 feet wide, which ran into South to North direction. It touched the link to the 20 feet wide street on the Northern side and 16 feet wide outer street/road on the Southern side. In the site plan attached by the plaintiff, the ownership of the plaintiff and that of his brother Jasbir Singh on Plot Nos. 34 and 35 was wrongly shown and that there is a passage of 16 feet wide between those plots and plot No. 36. People had been using it since the time of allotment. The plaintiff had been allotted plot Nos. 16 and 17. Under these circumstances, the plaintiff was not justified in laying claim over plot bearing No. 36. The suit was, therefore, sought to be dismissed.

4. Learned counsel for the appellant submitted that the appellant, along with his brother Jasbir Singh, purchased the suit property by a registered sale deed Ex. P.2 from Dhian Singh and, therefore, the defendant Gram Panchayat had no concern with the same. Moreover, the suit property had been carved out of the evacuee property and, therefore, the defendant Gram Panchayat had no claim over the same.

5. On the other hand, learned counsel for the respondent submitted that the appellant was not in possession over the suit property and he filed the suit with the sole aim of usurping the public passage falling on the Western side of plot No. 36 by filing wrong site plan Ex. P.1. It has also been submitted that the evacuee property vested with the Custodian and, therefore, the jurisdiction of the civil Court was barred.

6. The appellant claims to have purchased the suit property from Dhian Singh vide registered sale deed Ex. P.2. However, no evidence is available on the file to show as to how Dhian Singh became the owner and in possession of the suit property. In such a situation, he could not pass any valid title to the appellant.

7. Moreover, in the sale deed Ex. P.2, no dimensions of the property in question had been given. The site plan Ex. P.1 indicates that the suit property was bounded on its East by the property of the appellant and his brother Jasbir Singh, while on the West by that of his brother Jasbir Singh. This is in contradiction with the stand of the appellant taken during his testimony, wherein

he stated that he had never been allotted any other land in the village except plot No. 36 or he had purchased any other land.

8. It is the admitted case of the parties that the land in question was earlier owned by those who had left the country by migration at the time of the partition. On account of the said migration of the earlier land owners, the suit land vested with the Custodian in view of the provisions of Administration of Evacuee Property Act. Therefore, it cannot be said that the Gram Panchayat had no connection whatsoever with the property which has vacated by the original land owners on account of their migration from the village. After their migration, the Custodian became the owner of the evacuee land.

9. Only the Gram Panchayat could set up the village locality by dividing the property into different plots and allotting the same. The appellant cannot be heard saying that the Gram Panchayat had no concern with the evacuee property.

10. Moreover, once the evacuee property stood vested with the Custodian, the jurisdiction of the civil Court in respect of the same has been held to be barred in Punjab Wakf Board, Ambala Cantt. v. Dilbagh Singh (Dead) through L.Rs., 2004(4) RCR(Civil) 667 : 2005(1) Recent Civil Judgments 273. The relevant observations are as follows :

"Learned counsel has relied upon the judgment reported as Bachan Chand v. Punjab Wakf Board, 1984 PLJ 142 to contend that the Wakf Board is competent (to) file civil suit.

The argument raised by the learned counsel for the appellant is misconceived. In the Full Bench judgment, it has been held that Section 69(2) of the Wakf Act does not repeal Section 11 of the Administration of Evacuee Property Act, 1950 as only the State Acts are repealed by the aforesaid provisions of law and not the Central Act.

Since the property stands vested under the Administration of Evacuee Property Act, 1950 with the Custodian, the appellant is not entitled to dispute such vesting before the civil Court."

11. In view of the above, no case is made out for any interference in the concurrent findings recorded by the learned lower Courts. No substantial questions of law arises in the present appeal, being without any merit, is hereby dismissed.