
(2014) 07 P&H CK 0135
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 3280 of 2010 (O&M)

Sultan

APPELLANT

Vs

Gram Panchayat Ghatal Mahaniyawas

RESPONDENT

Date of Decision : 08-07-2014

Acts Referred:

Citation : (2015) 3 RCR(Civil) 462

Hon'ble Judges : Arun Palli, J

Bench : Single Bench

Advocate : Arun Yadav, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Arun Palli, J.—Suit filed by the plaintiff Sultan was decreed by the learned trial Court vide judgment and decree dated 23.02.2008. Appeal preferred by defendant-Gram Panchayat succeeded and was accordingly accepted by the learned First Appellate Court vide judgment and decree dated 13.04.2010. Accordingly, judgment and decree dated 23.02.2008 was set aside and the suit of the plaintiff was dismissed. That is how, the plaintiff is before this Court, in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

2. In short, in a suit filed by the plaintiff, he prayed for declaration that he was a permanent resident and bisweddar for village Ghatal Mahaniyawas, Tehsil and District Rewari. Defendant No. 1 i.e. Gram Panchayat was a registered owner in possession of the suit property comprising in khewat No. 184, khatoni No. 195 mustatil No. 11 killas Nos. 16/1(4-18) and 16/3(1-4), measuring 6 kanal 2 marlas. It was stated that the plaintiff had constructed a house in area measuring 1 kanal 18 marlas highlighted in red colour and marked as ABCD in the site plan. Vide resolution dated 23.12.1983, it was resolved by Gram Panchayat that all the villagers who had encroached upon the panchayat land, could deposit an amount @ Rs. 15/- per square yard and in lieu thereof,

panchayat would get the land registered in the name of the depositor. Pursuant to the said resolution, plaintiff purported to have deposited a sum of Rs. 17,243/- for area measuring 1 kanal 18 marlas with SDO (C) Assistant Collector, Gr.-I, Rewari. Vide another resolution dated 29.03.1992, panchayat further resolved that all those depositors who had deposited the requisite amounts, were entitled to get a decree effected qua declaration of ownership of suit property through Court. Despite the fact the plaintiffs had paid money in lieu of the area under their possession, defendants No. 1 to 3 were bent upon to demolish the house of the plaintiff. Hence the suit.

3. Defendants in defence asserted that the plaintiff had no right, title or interest in the suit land as no resolution was ever passed by the Gram Panchayat. Further, vide order passed by the Assistant Collector, Rewari and Collector Narnaul, plaintiff had been dispossessed of the suit land. Thus, it was maintained that the Gram Panchayat had no power to sell the suit land without sanction of the Director Panchayat, Haryana. So much so, Assistant Collector Gr.-I, Rewari, had already ordered eviction of the plaintiff from the suit land vide order dated 28.11.1980. Appeal against the said order was dismissed by Collector Narnaul, in the year 1981. Thus, the suit was liable to be dismissed.

4. On an analysis of the matter in issue and the evidence on record, learned trial Court was of the view that only the defendants were obligated to take permission from the authorities. Further, it was clear from the evidence on record that the plaintiff had deposited a sum of Rs. 17,243/- with SDO Rewari, on 03.08.1988 vide receipt Ex. P1/D. The said amount was the sale consideration of the suit land which was transferred by SDO Civil, Rewari, to defendant No. 1. Thereafter, defendants failed to obtain necessary sanction from Director Panchayat, Haryana for regularising the sale of the suit land to the plaintiff, although, the amount deposited by the plaintiff had been kept back by the defendants. It was observed that the argument advanced by the defendants that no sanction of the State Government regarding sale of suit property to the plaintiff was existing, was hardly of any consequence, as the defendants themselves did not obtain such a sanction. Thus, the defendants were estopped by their own act and conduct. Learned trial Court also placed reliance upon a decision reported as Smt. Malkhani Vs. Commissioner, Rohtak Division and observed that even in the said case, eviction of the purchaser of a panchayat land was ordered on the ground that the sale was illegal and therefore possession of the purchaser became unlawful as the prior approval of the government under Rule 12 of the Punjab Village Common Land Rules was not obtained. Panchayat had passed a resolution for sale of land and the plaintiff had responded by paying the price demanded by the panchayat. Thereafter, he has been in possession and even constructed a house. Therefore, in the circumstances, it was held that it was the duty of the panchayat to seek permission of the competent authority and there was nothing to show as to why the panchayat had failed to perform its duty. Thus, the suit was decreed vide judgment and decree dated 23.02.2008 and the plaintiff was accordingly declared to be owner in possession of the suit land with

consequential relief of injunction restraining the defendants from demolishing the construction of the plaintiff.

5. Being dis-satisfied with the said decree, defendant No. 1 i.e. Gram Panchayat preferred an appeal. Learned First Appellate Court reviewed the matter in issue, evidence on record and on an analysis thereof, arrived at conclusion that resolution Ex. PW 1/A dated 23.12.1983, showed that the respondent-plaintiff was never offered to purchase the land of the Gram Panchayat being an un-authorized occupant. Vide said resolution, offer was made to eight inhabitants of the village who were in un-authorized occupation of the panchayat land. Vide a subsequent resolution dated 29.03.1992 (Ex. PW 1/B), Gram Panchayat had mentioned the name of those persons who had deposited the amount with the panchayat and the name of the plaintiff occurred at Sr. No. 5. It was observed that in the earlier resolution dated 23.12.1983 (Ex. PW 1/A), the plaintiff was not recorded to be in un-authorized possession of the panchayat land, thus, his name did not find mention therein. His name occurred only in a subsequent resolution dated 29.03.1992. Concededly, no approval of the Government of Haryana was obtained for sale of panchayat land. Indisputably, neither the Gram Panchayat nor SDO (Civil) was competent to sell away the panchayat land without previous approval of the competent authority. Undoubtedly, plaintiff had deposited an amount of Rs. 17,243/- with SDO Rewari on 03.08.1988 vide receipt Ex. PW 1/D. However, Rule 12 of Panchayat Village Common Lands (Regulations) Rules, 1964, (for short "the Rules") postulates that sale of the land is permissible only after the previous approval of the State Government. Learned First Appellate Court referred to Rule 12, which reads as thus:

12. Purpose for which land may be sold (Section 5 and 15(2)(f) of the Act). (1) A Panchayat may with the previous approval of the government, sell land in shamilat deh vested in it under the Act for:-

(i) the purpose of constructing building for Block Samiti Office or any department of or institution recognised by the Government.

(ii) the purpose of any industrial or commercial concern: or

(iii) executing such a scheme as may be as source of recurring income for the benefit of the inhabitants of the village.

(iv) Residential purpose of the inhabitants of the village.

(v) For the purpose of financing the construction of building for schools and for veterinary and civil dispensaries in the Sabha area.

(2) Where it is proposed to sell the land in Shamilat Deh under sub-rule (1) the Panchayat shall forward to Government a copy of its resolution passed by a majority of the three forth of its members proposing to sell the land through the panchayat Samiti and (Divisional Deputy Director, Panchayati Raj) stating-

(a) the area and location of the land proposed for sale;

(b) the estimate income from the sale and whether the income would increase, if the land is sold after some years;

(c) the reasons as to why the pachayat wants to sell the land and the plans for utilization of the income from the sale.

(3) The publicity for sale of land in shamilat deh by auction shall be made by the Deputy Commissioner in accordance with the procedure laid down in sub rule (10) or Rule 6 on receipt of approval of Government who shall also decide whether the land should be sold in one or more lots and the officer who should be present at the auction.

6. On a consideration of Rule 12 of the Rules, the learned First Appellate Court observed that the sale of panchayat land was possible only after approval of the State and no such approval was indeed obtained. Mere deposit of an amount by the plaintiff with SDO Rewari and being in an un-authorized possession was hardly a ground to declare the plaintiff as owner of the land of the panchayat. A reliance was further placed upon a decision of this Court reported as Charanjit versus Nagar Panchayat Begowal and others 2010(1) RCR (Civil) 121 (P & H) and in the said case, it was held that auction of land in shamlat deh by Gram Panchayat, without previous approval of the State under Rule 12 (ibid) was invalid. The ratio of the said judgment was purported to be squarely applicable on the facts of the present case. Hence, no title accrued in favour of the plaintiff. That being so, it was further observed that the decision upon which the reliance was placed by the trial Court in Smt. Malkhani (supra) had no bearing on the facts of the present case. Admittedly, the Gram Panchayat was the owner of the suit land and the plaintiff being in unauthorized possession of the panchayat land could not seek injunction against a true owner. In a petition filed by the panchayat u/s 7 of the Village Common Land Act against the order of ejectment was passed against them. The appeal preferred against the said order was also dismissed. Thus, the plaintiff was being ejected from the suit property in accordance with law. Therefore, he was not even entitled to the decree for permanent injunction. That being so, the findings recorded by the trial Court on issue No. 1, 2 and 3 were held to be perverse and were accordingly set aside. Accordingly, it was held that the plaintiff had not become the owner in possession of the land measuring 1 kanal 18 months shown by letters ABCD in the site plan. The appeal was accordingly dismissed vide judgment and decree dated 13.04.2010.

7. I have heard learned counsel for the appellant at length and examined the judgments rendered by both the Courts below. Learned counsel for the appellant could not point out as to how the findings arrived at by the learned First Appellate Court were judicially perverse or contrary to the record. Concededly, no approval of the State Government as was required to be obtained for sale of panchayat land, in terms of Rule 12 of the Rules was ever obtained. That being so, plaintiff could not purport to have accrued any right, title or interest in the suit property.

8. In the wake of the position as set out above and the conclusions that have been arrived at by the learned First Appellate Court, there is hardly any ground, least plausible in law, to interfere therewith. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly dismissed.