

(2003) 07 P&H CK 0095

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2663 of 1980

Surjeet and others

APPELLANT

Vs

Ram Sarup and others

RESPONDENT

Date of Decision : 30-07-2003

Acts Referred:

Citation : (2004) 2 LJR 300 : (2004) 2 RCR(Civil) 618

Hon'ble Judges : V.K.Bali, J

Advocate : Mr. Rajesh Chaudhary and Mr. V.P. Singh, Advocates., Advocates for appearing Parties

Judgement

V.K. Bali, J.—This appeal has been filed by the defendants in the original lis, against whom a decree of possession was passed by learned Subordinate Judge, which has since been confirmed in appeal preferred by them, by learned first Appellate Court.

2. Brief facts culminating into the filing of this appeal reveal that the plaintiff filed a suit pertaining to the land measuring 63 kanals 6 marlas, interalia, pleading that the same was part of the village pond and was used for the common purposes of the village. One Lal Singh was the Sarpanch of Gram Panchayat in 1972. Defendants 1 to 4 filed Suit No. 1405 in the Court of Sub Judge Ist Class, Kaithal in 1972 against the Gram Panchayat. Lal Singh filed an admission written statement and suffered decree dated 11.12.1972. According to the decree aforesaid, the suit land was held to be owned and possessed by defendants 1 to 4. The plaintiff challenged that decree on the ground that the same was based on fraud and misrepresentation and that the Sarpanch had colluded with defendants 1 to 4 and he, therefore, suffered that decree. No specific meeting of the Gram Panchayat was called to admit the claim of defendants 1 to 4 nor any such meeting was held. It has further been pleaded that the Sarpanch and other defendants belong to the same Pana and they, thus, colluded with each other. The village and Gram Panchayat, in the manner aforesaid, were deprived of the suit property. Subsequently, in 1975, defendants 5 to 43 filed suit in the Court of

learned Subordinate Judge Ist Class, Jind against defendants 1 to 4 in respect of this very land. Defendants 1 to 4 admitted the claim of defendants 5 to 43 and in this way, decree was passed in their favour on 13.2.1975. It was pleaded that this decree was also illegal, void and ineffective against the rights of the Gram Panchayat and other villagers. The plaintiff moved the Assistant Collector Ist Grade, Jind under Section 13A of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act of 1961). However, according to the decision given by this Court, the matter could not proceed there and, therefore, the plaintiff filed present suit. A decree for declaration to the effect that the decrees aforesaid were illegal, void and without jurisdiction, was prayed for.

3. On the contest show by the defendantappellants, learned trial Court framed the following issues :

"1. Whether the land in suit was owned and possessed by Gram Panchayat ? OPP.

2. Whether the decree in suit No. 1405 dated 11.12.1972 is void and without jurisdiction for reasons mentioned in the plaint ? OPP.

3. Whether the decree dated 13.2.1975 in file No. 44 of Sub Judge Ist Class, Jind, Shri M.K. Bansal is void and without jurisdiction reasons mentioned in the plaint ? OPP.

4. Whether the Court has no jurisdiction ? OPD.

5. Whether the suit is barred by time ? OPD.

6. Whether the suit is not maintainable in the present form ? OPD.

6A. Whether the plaintiff has no locus standi to file the suit for the want of resolution by the Gram Panchayat, if so to what effect ? OPD

7. Relief."

As mentioned above, resultant trial culminated into the judgment and decree in favour of the plaintiff, passed on 3.3.1979, which, as mentioned above, has since been confirmed by learned Appellate Court vide judgment dated 5.6.1980.

4. Mr. Rajesh Chaudhary, learned counsel representing the appellants, in support of this appeal has raised two fold contentions. It is first urged by him that Civil Court had no jurisdiction to try the suit as the same was clearly barred under Section 13 of the Act of 1961. It is then urged by learned counsel that the land in dispute was not Shamlat Deh as defined under Section 2(g) of the Act of 1961 and, therefore, the findings recorded to the contrary cannot sustain. This argument has primarily been raised on the basis of Jamabandi, Ex. D3, pertaining to the year 196263.

5. I have heard learned counsel representing the parties and examined the records of the case. In the context of facts and circumstances of this case, I, however, find no substance in either of the contentions raised by learned counsel, as noted above. As mentioned above, array of facts given in the plaint clearly

demonstrates the legality and authenticity of the decree, subject matter of challenge and the said decree, as mentioned above, has since been set aside on the ground of fraud and misrepresentation and further that the Sarpanch had not followed the requisite procedure before admitting the claim of the plaintiff in the case aforesaid. While deciding this issue, there was no necessity at all to determine as to whether the land in dispute is Shamlat Deh. It is conceded position that Civil Court's jurisdiction was to be excluded only if such a determination was necessarily required. Findings of learned trial Court, while dealing with the issue of jurisdiction, are also likewise. I find no infirmity or illegality in the said findings of learned Courts below. Insofar as, second contention of learned counsel, as noted above, is concerned, suffice it to say that reading of Jamabandi, Ex. D3, would clearly show that the land was a pond. No doubt, the land has been described in the revenue record as Shamlat Deh Thola Man Singh Hasab Rasad Khewat. There is no dispute to the fact that the land shown as Patti, Pana or Thola would not vest in the Gram Panchayat and shall not be Shamlat Deh as the same, as per revenue records, is not used for common purposes. The pond has necessarily to be held to be used for common purposes. There is, thus, no merit whatsoever in the contention of learned counsel that the land was not Shamlat Deh as, same was not covered under Section 2(g) of the Act of 1961.

Finding no merit in this appeal, the same is dismissed, leaving, however, the parties to bear their own costs.