



In the High Court of Punjab and Haryana at Chandigarh

RSA No. 823 of 2017 (O&M)

Reserved on: 21.1.2025

Date of Decision: 4.2.2025

Bhupinder Singh and others

.....Appellants

Versus

Bharat Singh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Mr. Pritam Singh Saini, Advocate with
Ms. Kanchan Sindhu, Advocate and
Ms. Vamika Johar, Advocate
for the appellants.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. In Civil Suit No. RT-413 of 10.1.2008, an affirmative decree was made, on 24.7.2014, by the learned Civil Judge concerned, whereby, the relief claimed by the plaintiff in the said suit, inasmuch as, the rendition of a decree of mandatory and permanent injunction qua the suit lands, thus became endowed to him.

2. The said affirmative decree became assailed by the defendants (respondents herein), before the learned first Appellate Court concerned. The learned first Appellate Court through a verdict made on 23.8.2016, upon the apposite first appeal, dismissed the same and upheld the judgment and decree passed by the lower Court.

3. Feeling aggrieved from the verdict of the learned First Appellate Judge, whereby he affirmed the judgment and decree passed by



the learned Civil Court, thus the appellants have instituted the instant RSA before this Court.

Facts of the case

4. Before proceeding to make an adjudication upon the matter, it is necessary to cull out the necessary facts.

5. A suit for mandatory injunction became filed by one Bharat Singh (respondent No. 1) against the defendants-appellants, for thus a decree being passed upon defendant No. 1 for removing his jhugi made of sarkanda, as became raised on the land comprised in khewat/khatauni No. 636/693, khasra no. 254 (2-2).

6. Moreover, relief of permanent injunction became also espoused in the said suit rather for restraining the defendants from interfering in the peaceful possession of the plaintiff over the above property, situated in village Jhanjheri, HB No. 50, Tehsil Kharar, District Mohali.

7. It has been averred in the suit, that plaintiff (respondent No.1 herein) was the khewatdar of village Jhanjhri. The suit land was averred to be the part of makbuza malkan of the village, and, the plaintiff along with his other family members were the share holders in the said property. It is further averred therein, that in the month of January 2007, the defendants (appellants herein) had taken illegal possession of the property in dispute and, raised construction by way of making a jhugi thereon, and, had been threatening the plaintiff to interfere in his peaceful possession over the property in dispute.

8. The defendants contested the said suit by filing their written statement, wherein they averred that the property in dispute belonged to



them and, they have been using the same since the time immemorial for preserving water, tethering cattle etc. It is further averred therein, that the plaintiff was neither owner nor in possession of the suit property.

9. The said suit became decreed vide judgment dated 24.7.2014, and, defendant No. 1 was directed to remove his temporary jhugi made of sarkanda from the suit land. Moreover, the defendants were also restrained from interfering into the peaceful possession and ownership of the plaintiff over the above said property.

10. Being aggrieved from the judgment and decree (supra), the appellants preferred an appeal before the first Appellate Court, which vide order made thereons, on 23.8.2016, became dismissed.

Submissions of the learned counsel for the appellants

11. The learned counsel for the appellants submits, that both the Courts below have failed to appreciate the fact, that the Financial Commissioner (Revenue), Punjab vide order dated 10.3.2008, had rejected the order dated 15.11.2004 passed by the Assistant Collector concerned, thus on the ground, that the said order dated 15.11.1994, was procured by placing reliance on false and fabricated documents. He further submits, that the said order dated 10.3.2008 was also challenged before the this Court, and, vide order dated 25.10.2010, passed by this Court, the Additional Depputy Commissioner, Mohali was directed to conduct inquiry into the matter, and, pass the order within six months. In compliance to the said order, the Additional Deputy Commissioner (Development), cum-Collector, S.A.S. Nagar, vide order dated 14.7.2011, held that the order dated 15.11.1994 was procured by producing false documents, and, by playing fraud on the Court, and, thereby set aside the order dated 15.11.1994. He further submits, that



the order dated 14.7.2011 was unsuccessfully challenged before the learned Commissioner concerned. Resultantly, the learned counsel submits that since the order dated 15.11.1994 has already been set aside, thereby the plaintiff could not be held to be the owner of the suit property.

12. The learned counsel for the appellants further submits, that the suit of the plaintiff was not maintainable, as the Gram Panchayat concerned, was the owner of the property and the plaintiff has not impleaded the Gram Panchayat as a party in the said suit. Therefore, it is prayed that the impugned orders be quashed and set aside.

Inferences of this Court

13. Since through an order of even date passed upon CWP No. 12571 of 2012, this Court has dismissed the said petition filed by the petitioners therein, wherein also the present respondents become arrayed as party. Moreover, when therebys this Court has affirmed the orders made by the learned Collector, and, by the learned Commissioner concerned, wherebys the suit of the Gram Panchayat concerned, claiming title over the suit land, has been decreed. In addition, when in the verdicts (supra), thus the earlier order dated 15.11.1994, as became obtained by the land owners concerned, by filing a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961'), rather has also been declared to be obtained by perpetuating a fraud.

14. Resultantly therebys since the concurrently made decrees vis-a-vis the plaintiff-respondent, when thus become banked upon the earlier order dated 15.11.1994, made on the petition filed under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961'). However, since the said order has been declared to be suffering from the



vices of fraud, as such, the rendition of the instant concurrent decrees, but based on the said order dated 15.11.1994, are prima facie required to be quashed and set aside.

15. However, since the Gram Panchayat concerned, who through the makings of the decisions (supra) has been declared to be the owner of the suit property. Therefore, now there is an imperative requirement of the Gram Panchayat concerned, thus becoming impleaded in the instant civil suit, as only in the event of the Gram Panchayat concerned becoming impleaded in the suit, that thereby the Gram Panchayat concerned, thus can now tender into evidence the judgment passed by this Court, whereby this Court has declared the order dated 15.11.1994 to be obtained by a fraud. Subsequently, thereby the learned trial Judge concerned, can proceed to pass a fresh decision on the present civil suit.

16. For ensuring the above, the remand of the present lis to the learned Court of Civil jurisdiction, is but imperative, thus for enabling the Gram Panchayat concerned, to seek its impleadment in the instant civil suit, through its casting an application under Order 1 Rule 10 CPC before the learned Civil Court concerned, so that, after a valid order becoming rendered thereons, thus it is also permitted to institute a written statement to the plaint. Subsequently thereby, fresh issues, if required, be also struck, and, thereons the evidence adducing discharging onus be cast upon the litigants concerned.

17. Cumulatively thereby, for enabling the above, and, for ensuring that complete justice is done to all, resultantly this Court after allowing the instant RSA, proceeds to quash the impugned judgments and decree, but with an order or remand to the learned Civil Court concerned, to



re-register the suit to its original number, and, with a further direction to the Gram Panchayat concerned, to through filing of an application under Order 1 Rule 10 CPC seek its impleadment in the array of defendants, and after affirmative orders becoming passed thereons, the learned trial Court concerned, shall permit the Gram Panchayat concerned, to institute a written statement to the plaint. Moreover, if fresh issues are required to be struck, they be re-struck, and, thereons the evidence adducing discharging onus be ensured to be cast upon the litigants concerned. Subsequently, the learned trial Judge concerned, is directed to draw a fresh decision, in accordance with law, on the remanded lis. The entire exercises (supra) be ensured to be completed with but within six months from today.

Final Order

18. In view of the above, the instant RSA stands allowed. The impugned judgments and decrees are quashed and set aside.

19. The pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

February 4th, 2025

Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No