

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S) . 4687/2009

PANCHAYAT SAMITI, DABWALI & ANR. APPELLANT(S)

VERSUS

OM PARKASH & ANR. RESPONDENT(S)

O R D E R

1. This appeal has been preferred by the Panchayat Samiti Dabwali, aggrieved by the reversal of Judgment and decree passed by the First Appellate Court, by the High Court.

2. The Plaintiffs-respondents filed the Suit before the Trial Court for the permanent injunction on 12.11.1976, Civil Suit No.365 of 1976 was filed before Sub-Judge 1<sup>st</sup> Class, Dabwali. Later on, a prayer was made for the restoration of possession also and removal of the boundary wall constructed by the Panchayat. The Plaintiffs claimed to be owners of the Suit land ad-measuring 6 canals and 8 marlas comprised in Khasra No. 679/1, in the shape

of a plot with a dimension of 88 feet in the South, 0.15 feet in the North, 46 feet in the East and the West.

3. Plaintiffs set up the case that they had purchased the Suit land from Santa Singh and Hari Singh by four different sale deeds, the area 2 canals 10 marlas was purchased from Santa Singh vide registered sale deed dated 15.03.1972 and an area measuring 2 canals 12 marlas was purchased from Hari Singh vide registered sale deed dated 21.03.1972. 17 marlas were purchased from Hari Singh by way of registered sale deed dated 16.06.1972 an area of 9 marlas was also purchased from Hari Singh vide registered sale deed dated 16.07.1972. Total area purchased was 6 canals 8 marlas comprised of different portions of Survey No.679/1 and reflected in the record of rights in the year 1974-1975.

4. Before deciding the matter of Interim grant of Injunction, Local Commissioner had been appointed for measurement of land. The Commissioner submitted the report on 02.01.1978. After demarcation in presence of the parties, it was opined in the

report that building of the Panchayat Samiti was existing over the land comprised of survey Nos. 679/1, 679/2 and 679/3. It was also opined by the Commissioner that on measurement, the wall was found on Khasra Nos. 679/1, 679/2 and 679/3. The measurement was verified from the Shajra produced by the Patwari. Details of the measurements of the sites measured were given in the report dated 21.09.1978, Annexure P-6. The Trial Court rejected the application of the Plaintiff for grant of interim injunction relying upon the said report. An appeal preferred against the order of refusal to grant the interim injunction was also dismissed. The matter was taken in the revision to the High Court. The revision was dismissed on 18.01.1979, as the defendant has already constructed boundary wall on the Suit land. The Plaintiffs then were permitted to amend the plaint seeking relief of restoration of possession and removal of the boundary wall.

5. It was contended by the defendant-Panchayat, in its written statement, that the land had been acquired by the State Government, and demarcation

was done at the time of acquisition of the land. There was no encroachment made by the Panchayat. Since, the land had been acquired and award dated 08.08.1969 was passed, Santa Singh and Hari Singh were left with no alienable interest in favour of the Plaintiffs after executing various sale deeds in favour of others.

6. The Trial Judge went to the spot on 24.09.1979 and directed the Tehsildar to make measurement and submit a report. The report was submitted by Kanungo, though direction was given to the Tehsildar to submit a report. The Trial Court, considering the evidence on record, discarded the map of 1969 as the forged document on the strength of letter P-9/1 written in 1976, in which it was mentioned by the Land Acquisition Collector that Shajra was not available on file for the purpose of measurement. Thus, the genuineness of Exhibit D-1 revenue map of 1969 has been doubted. Since it was found that the Panchayat was in possession of 20 canals 19 marlas of the area, whereas total acquired area was only 18 canals 16 marlas, it has been observed that the remaining area belonged to

the Plaintiff. It was also opined that plot Nos. 679/2, 679/3 were encroached by others and that the area had also been acquired for the purposes of Panchayat. As such, the total area which was in possession of the Panchayat, in excess of the acquired land, was 6 canals 8 marlas and that obviously belonged to the Plaintiff. Consequently, the Trial Court decreed the Suit.

7. The First Appellate Court reversed the judgment and decree on the ground that land ad-measuring 18 canals 16 marlas had been acquired for the purposes of Panchayat Samiti building and office existed on that. The First Appellate Court held that after the acquisition of the said area, Santa Singh and Hari Singh could not have sold the part of the land that had been acquired and comprised in Survey No.679/1. With respect to the encroachments, the First Appellate Court opined that earlier Local Commissioner had opined against the Plaintiff on the basis of report, interim injunction had been vacated even if that report was to be discarded, the report which was filed subsequently by Kanungo on the basis of the inspection made by the Trial

Judge simply indicated that total area occupied by the defendant was to the tune of 20 canals 19 marlas, that did not necessarily imply that the excess area measuring 2 canals 3 marlas belonged to the Plaintiff. Plaintiffs have failed to prove that it was owned by them and, that any encroachment had been made by the Gram Panchayat on the land belonging to them. As such, they were not entitled to any relief with respect to 6 canals 8 marlas. The decree was ill-founded and it was based upon an oral *ipse-dixit* evidence which could not have been relied upon. It was also found by the First Appellate Court that evidence on record un-mistakingly pointed out that the vendors of the Plaintiff had no right, title or interest left in the land comprised in the disputed survey No.679/1 at the time of execution of the sale deeds in favour of them. Defendants have placed on record mutations made on the basis of sale transactions which had been made by the vendors of the Plaintiff from Exhibit D-8/1, D-9 to D-21, D-23 to D-34, D-41 to D-56 with respect to the various portions of said S.Nos. to several other persons. Thus, they

were left with no subsisting land of their ownership in survey no.679. Thus, they could not have sold the land which had already been acquired. Thus the plaintiffs were unable to prove that they derived any right, title or interest on strength of the sale deeds.

8. The High Court has reversed the judgment and decree passed by the First Appellate Court mainly on the ground that exhibit D-1 was the map of 1969 which could not have been relied upon. It appeared to be forged in view of the communication D-9/1 dated 18.09.1976, which indicated that no site plan was available in the office. It has been thus inferred by the High Court that the map D-1 dated 12.05.1969 was not a genuine site plan. The High Court has also considered the site plan P-8 produced by the Plaintiff and has compared it with site plan P-1 on the basis of which no measurement had been done, to give finding in favour of the Plaintiff. The High Court opined that it was not appropriate to the First Appellate Court to reverse the finding on the facts recorded by the learned Trial Court. The High Court has restored the

judgment and decree passed by the High Court. Hence, the appeal has been preferred by the Panchayat.

9. After hearing learned counsel for the parties at length, we are of the considered opinion that the Plaintiffs had miserably failed to prove the case with which they came to the Court. In a Suit for injunction and restoration of possession, it was incumbent upon the Plaintiff to prove their own title may be that the defendant in possession may have none.

10. In the instant case, the report of the Commissioner obtained at the time of grant of the injunction was also on record, which indicated that the construction raised by the Panchayat was over the acquired land. It gave a vivid description of the land and the measurements made.

The report of the First Commissioner is as follows:

That firstly I demarcated the disputed land on the basis of the site plan at page No. 65 of judicial file.

That 48 karam i.e 264 ft. when measured along with the Sirsa-Dabwali road as shown in the site plan rightly

went up to the corner of the disputed land. That Further side of 65 karam i.e. 357 ft. was measured from the corner where 48 karams ended. It was found that the side went beyond by 24 ft. of kaccha boundary wall existing on the spot. That thereafter side measuring 70 karams i.e. 385 feet was measured which was also found correct. That thereafter the end where 385 feet were measured, the measurement was started i.e. 35 karama, 8 karam X 6 karam, and 6 karam as shown in the site plan. The measurement revealed that the total was 50-8/11 karams whereas it should have been 53 karams.

The measurement of the site plan was found to fall in Khasra No. 679/1, 679/2, 679/3. The location of the Khasra No. 679/1, 679/2 and 679/3 was also verified from the Shajra produced by the Patwari.

However, the counsel for the Plaintiff raised an objection that this site plan is not the original site plan and also claimed that demarcation should be done as per the site plan placed at page No. 45 of the judicial file. In pursuance of the request, I conducted the demarcation as per the site plan referred above. That the side of 320 feet as shown in the site plan was measured on the spot along Sirsa Dabwali Road, the side measuring 176 feet falls in Khasra No. 679/1 and the rest 144 feet as shown in the site plan falls in Khasra No. 652.

Thereafter, the remaining 3 sides of 320 ft. were also measured and the measurement revealed that some of the areas towards back side along Bhatinda Road did fall in Khasra No. 676 and 677 which is not the area acquired.

The bone of contention of the parties seems to be the side measuring 144 feet along with Dabwali-Sirsa Road which falls in Khasra No. 652. If the Khasra No. 652 would have been acquired then the position would have been different. That the side measuring 144 feet out of 264 feet along Dabwali-Sirsa road is attained by the Plaintiff to be their land whereas it has been acquired as per site plan at page 65 of judicial file. That the Panchayat Samiti has constructed its office as per site plan at page 65 of the judicial file, the rest of the disputed area is lying vacant on the spot.

11. Thereafter, another report was submitted pursuant to the inspection made by the Judge. The report submitted by Gulzari Lal Kanungo on 05.07.1979 is as follows:

On the order of Tehsildar Sahab, I and Om Prakash Patwari went for the demarcation of office of the B.D.O. Dabwali along with Gurdayalmal Patwari Block Samiti Dabwali. As per record, the decision of mutation of land acquired for Panchayat Samiti Dabwai has not been done so far. In this respect mutation No. 4942 dated 3-12-78 is entered but Taima is not marked for the Land acquired for the office of Block Samiti, Award of the land notification no. 905-CD-III-69 dated 24-. -69 was announced as per that land was acquired from 679/2 0-10, 679/3 0-7, 679/1, K17-19, Total area K18-M16.

Patwari Halaka has shown from the

award file two maps (blueprints) one is at serial no. 1038 dated 1-9-76 with this Blueprint field book is not attached but is written 320'feet X 320'feet as per site it is not like that. This blueprint is made after leaving some area from the southern side. The second blueprint is at serial no. 1357 dated 3-11-78 has been received from copying Branch. This BluePrint is different from other. In this Blueprint southern side is shown as 58 whereas it is 65 in the field book. The northern side is entered in the field book as 34 whereas in the Blue Print it is 6+4+34 total is 44.

In the map No. 2 on the Southern side the land area that is already included, Mutations of these numbers have been duly sanctioned as following:

No. Mutation	No. Khasra (survey)	Area
<u>4295</u> 28-2-73	<u>679</u> 1/3/13/2/3/3/1	0-17
<u>7296</u> 28-2-73	<u>679</u> 1-3/13/2/3/3/1	0-19
<u>4191</u> 17-4-72	<u>679</u> 1/3/13/2/3/1	2-12
<u>4192</u> 17-4-72	<u>67.9</u> 1/6/13/2/3/2	2-10
		<hr/> 6-8

Since Blue Prints are of different demarcations, the measurement could not be done on the spot. Measurement of the areas done under:

K

M

As per aforesaid mutations	6	08
Khasra No. 679/2	0	-10
Khasra No. 679/3	0	-07
Khasra No. 679/1 Bal	13	-18
Area at roadside	0	-05

(emphasis added)

12. When we compare the report submitted by the Kanungo on 05.07.1979 as well as the report submitted by the earlier Commissioner, we find that the second report which was submitted by the Kanungo was of no use. It simply gave the dimensions of various survey numbers and nothing more than that. It was mentioned in that blueprint being different measurement could not be done. It was not at all established by the report submitted on 05.07.1979 that any encroachment had been made by the Gram Panchayat over the land belonging to the Plaintiff. It was incumbent upon the plaintiffs to have adduced satisfactory evidence to prove that the land belonged to them so as to seek a decree of the restoration of possession and mandatory injunction for removal of the boundary wall that has been constructed by Panchayat.

13. The First Appellate Court was right in its approach that merely by the fact that 20 canals 19 marlas was found to be in possession of the Panchayat, would not prove that it was the land belonging to the plaintiffs only. The Trial Court had also proceeded on surmises and conjectures to hold by that the land belonged to the plaintiff. The finding was not based on the positive strength of proof of title by plaintiffs that was based on inferential reasoning. In a case of encroachment, it is a trite proposition of law that in the absence of agreed map and it is only by way of measurements of land that encroachment has to be established. The plaintiffs have not been able to establish it in the instant case as such they have to suffer.

14. It is apparent that exhibit D-1 map was placed on record. Nothing was there to discard the correctness of the map of 1969. It is too much to presume that a document of 1969 would be forged by the State Authorities in order to justify the claim of Panchayat Samiti and to prove that it was

acquired land. There was absolutely no evidence to rebut the statutory presumption of the correctness of such maps and genuineness of the same. It was rightly relied upon by the First Appellate Court, the reversal of the finding of the appellate court by the High Court could not be said to be proper. Thus, we find that the judgment and decree passed by the First Appellate Court to be appropriate. Merely on the basis of letter P9/1 of 1976, mentioning that it was not on file, it could not have been held that the map of 1969 had been manufactured by State authorities. Map must be on file of maps of 1969. There was no reference to record of maps. There was no evidence on record to prove the forgery and there is a presumption of correctness of the Khasra and such other revenue documents in the form of maps etc. that had not been rebutted by the letter of 1976. It was not enough to discard the presumption of correctness of such documents. Simply by the statement of Patwari, the case could not be said to be proved.

15. Yet another aspect has also not been gone into

by the High Court while reversing the judgment of the First Appellate Court that vendor of plaintiff had no subsisting alienable interest left with them on the on the date of sale deeds in their favour, in view of various other sale deeds executed by them earlier in point of time. The First Appellate Court had relied on various mutations orders made on the basis of sale deeds executed by the vendors of the plaintiffs and had opined that the vendor of the Plaintiff had been left no part of the land of their own in which they could have any right title of interest to transfer to plaintiffs. Thus, sale deeds in favour of plaintiff were unauthorized and did not confer any title. It was incumbent upon the High Court to have gone into aforesaid reasoning employed by the First Appellate Court. Apart from that, we are of the considered opinion that the plaintiffs had failed to prove their title so as to obtain a decree for restoration of possession as a person in possession may have none.

16. Thus, we allow appeal set aside the impugned judgment and decree of High Court. We restore

judgment and decree of First Appellate Court  
dismissing the suit of plaintiffs. No costs.

.....J.  
(ARUN MISHRA)

.....J.  
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI  
DECEMBER 05, 2017

ITEM NO.101

COURT NO.10

SECTION IV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).4687/2009

PANCHAYAT SAMITI, DABWALI &amp; ANR.

Appellant(s)

VERSUS

OM PARKASH &amp; ANR.

Respondent(s)

(and IA No.58145/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA.No.58146/2017-EXEMPTION FROM FILING O.T. ORIGINAL RECORD RECEIVED IN THE MATTER.)

Date : 05-12-2017 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ARUN MISHRA  
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s) Mr. Rakesh Khanna, Sr. Adv.  
Mr. Pawan K. Bahl, Adv.  
Ms. Shafali Jain, Adv.  
Ms. Vaishali gupta, Adv.  
Mr. Rakesh K. Sharma, Adv.

Mr. Vijay K. Mehta, AOR

For Respondent(s) Mr. A.K. Sanghi, Sr. Adv.  
Dr. Rajeev B. M., Adv.  
Mr. S. R. Setia, AOR

Mr. Ansar Ahmad Chaudhary, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The Civil Appeal is allowed in terms of the signed order.

(SONALI SAUND)  
SENIOR PERSONAL ASSISTANT

(JAGDISH CHANDER)  
COURT MASTER

(Signed order is placed on the file)