

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.2530 of 1987 (O&M)
Date of Decision: 14.10.2015**

Mali Ram (Dead) through LRs

....Appellant

Vs

Shyam Sunder and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. C.B. Goel, Advocate
for the appellant.

Mr. Amit Jain, Advocate
for respondent No.1.

Mr. Mahabir Singh Sindhu, Advocate
for respondent No.2.

1. ***Whether Reporters of local papers may be allowed to see the judgment ?***
2. ***To be referred to the Reporters or not ?***
3. ***Whether the judgment should be reported in the Digest?***

RAJ MOHAN SINGH, J.

[1]. Plaintiff-appellant is in second appeal against the judgment and decree dated 09.04.1987 passed by Additional District Judge, Narnaul whereby judgment and decree dated 30.07.1986 passed by Sub Judge Ist Class, Narnaul was upheld.

[2]. Plaintiff filed suit for permanent injunction on the ground that he is owner in possession of MEP No.1630 measuring 994 square yards (86' x 104') with the following descriptions:-

East	:	Rasta and Road
West	:	Rasta and open land

North : MEP Nos.535 and 834
South : Nadi and rasta situated in Mohalla Sari
Bhatiaran at Narnaul.

[3]. Plaintiff claimed that he purchased suit land in open auction on 17.02.1959 for a consideration of Rs.1500/-. Sale certificate was issued on 30.05.1959 by the Competent Authority. He claimed his proprietary possession over the suit land since May 1959. Plaintiff alleged that Ram Chand Purohit defendant No.1 filed a civil suit No.305 of 1974 against the plaintiff and defendant No.2 restraining them from interfering in his possession over residential plot measuring 2244 square yards. In the said suit defendant-Municipal Committee, Narnaul filed a written statement admitting plaintiff to be owner in possession of the suit land. The site plan was also got prepared by the Municipal Committee and was produced on record. Ram Chand Purohit-defendant No.1 prevailed upon Municipality Committee for obtaining sanction of site plan which otherwise could not have been given to him because plaintiff was owner in possession of the land. Ram Chand Purohit-defendant No.1 got the suit dismissed as withdrawn on 15.09.1977.

[4]. Present suit was filed on 12.06.1978 in which Ram Chand Purohit contested the suit, denying the plaintiff to be owner in possession of the suit property. However purchase of plot No.1630 by the plaintiff has not been denied, but at the same time claimed that under the garb of allotment of plot No.1630 by the Authority, plaintiff is not entitled to seek injunction qua the property in question.

The heaps of stones lying over the property were claimed by the defendant No.1. This property was never included in the earlier suit filed by the defendant No.1 Ram Chand Purohit.

[5]. The earlier civil suit No.305 of 1974 was got dismissed as withdrawn because defendant has ceased to interfere in the possession of Ram Chand Purohit. The admission made by Municipal committee in the said suit was denied and claimed to be not binding upon the defendant No.2. Site plan has been legally and validly sanctioned by the Municipal Committee in favour of defendant No.1. Defendant No.2 also contested the suit denying the admission of ownership and possession of the plaintiff over the suit land. Sanctioning of site plan in favour of defendant No.1 was admitted and it was pleaded that sanction was accorded after due notice to the plaintiff who raised no objection. In pith and substance, ownership and possession of the plaintiff was denied by the Municipal Committee.

[6]. From the pleadings of the parties, following issues were framed:-

- “1. Whether the plaintiff Is the owner of the site in dispute? OPP*
- 2. Whether the plaintiff has been in possession thereof? OPP*
- 3. Whether defendant No.1 is the owner and in possession of the site in dispute? OPD*
- 4. Whether the plaintiff is entitled for the injunction*

as prayed for? OPD

5. *Whether the suit is not maintainable as alleged? OPD*
6. *Whether the defendant is entitled for special costs in case of dismissal of the suit? OPD*
7. *Whether the suit property has not been properly described as alleged? OPD*
8. *Relief.”*

[7]. Trial Court allowed both the parties to lead evidence. Trial Court took up issues No.1 and 2 together and decided the same against the plaintiff. Under issue No.3 it was observed that no finding is required to be given on this issue as plaintiff was supposed to succeed on the strength of his own case and not on the basis of any weakness in the case of defendants. Findings under issues No.4 and 5 went against the plaintiff in view of findings recorded under issues No.1 and 2. Issue No.6 was not pressed by the defendants. Issue No.7 was also decided on the basis of findings under issues No.1 and 2. Ultimately suit was dismissed vide judgment and decree dated 30.07.1986.

[8]. The said judgment and decree was upheld by the Additional District Judge vide judgment and decree dated 09.04.1987.

[9]. I have heard learned counsel for the both the parties at length and have also perused the material on record with their assistance.

[10]. Factum of purchase of MEP No.1630 by the plaintiff is not

under dispute. The dispute is where this property is situated and further dispute between the parties is whether the property purchased by the plaintiff is the same on which claim has been based in the suit?

Plaintiff has claimed that he is owner of MEP No.1630 measuring 994 square yards situated in Mohalla Sarai Bhatiaran in Narnaul and having dimensions as shown in the preceding part of the judgment. The title over the property in question has been claimed on the basis of sale certificate Ex.P-3/2 issued by the Government of India, Ministry of Rehabilitation on 30.05.1959. As per sale deed the property sold to plaintiff i.e. MEP No.1630 has the following dimensions:-

North	:	Property/MEP No.834
South	:	Rasta
East	:	Nadi
West	:	Property/MEP No.535

[11]. Evidently the dimensions given in the sale certificate Ex.PW-3/2 does not tally with the description of suit property given in the plaint. The descriptions/all dimensions of MEP No.1630 as recorded in the sale certificate/sale deed was never rectified by the Competent Authority in terms of boundaries as mentioned above. In the line plan Ex.PW-3/3 issued by the Competent Authority, it cannot be discerned as to what has been written on the Western side, however, 400 feet long passage to Tehsil has been claimed. The remaining dimensions are as under:-

North	:	MEP No.535
South	:	Nadi
East	:	Nothing has been shown

[12]. In civil suit No.305 of 1974, the dimensions given by Ram Chand Purohit were to the following effect:-

East (Shirk)	:	Road
West (Garb)	:	Rasta
North (Shumal)	:	MEP of Kishan Kumar and thereafter Gali and Ahata of Kumharan
West (Jenau)	:	Nadi

[13]. In the site plan Ex.P14/A proved by the plaintiff during trial, showed the following dimensions:-

East	:	Katcha passage and Road.
West	:	Rasta/house of Dr. Satija
North	:	Property of Sh. Kishan/Wall with electric meter
South	:	compound wall of Municipal Park and then Nadi

[14]. In the site plan Ex.P-1, the property in question has been shown with the following descriptions:-

East	:	Katcha passage adjoining to mettled road leading to bus stand
West	:	Rasta/open plot
North	:	MEP No.535
South	:	Nadi

Aforesaid descriptions are somehow in consonance with the descriptions pleaded in the plaint.

[15]. Plaintiff has adduced evidence, showing different dimensions of the plot in different documents. The dimensions

shown in the plaint/site plan Ex.P-1 is in contrast to the dimensions shown in sale certificate Ex.PW-3/2, line plan Ex.PW-3/3 and site plan proved by the plaintiff during trial Ex.P14/A. Dimensions are not reconcilable in these documents.

[16]. Learned counsel for the plaintiff-appellant has placed reliance upon the admission made by the Municipal Committee in civil suit No.305 of 1974 decided on 15.09.1977 wherein plaintiff was admitted to be owner in possession of the property MEP No.1630. The reliance has also been placed on site plan Ex.PW-2/A which was got prepared by the Municipal Committee and was produced in the said case.

[17]. No evidence has come on record that on what basis MEP No.1630 was located by the Junior Engineer while showing placement of property in site plan Ex.PW-2/A. The descriptions of the property as mentioned in the sale certificate and in line plan were quite discrepant. Neither municipal number, nor any revenue record was available to pin point exact placement of MEP No.1630, therefore, both the Courts have rightly rejected the alleged admission vis-a-vis placement of MEP No.1630 in the site plan PW-2/A as prepared in the earlier suit which was ultimately got dismissed as withdrawn by Ram Chand Purohit-defendant No.1. So far as admission of title qua property No.1630 is concerned that is an admitted fact, but it is not ascertainable from record viz. different site plans and documents where MEP No.1630 is factually located.

Heavy onus was on the plaintiff to demarcate/locate MEP No.1630 with reference to other properties on record.

[18]. Possession over vacant piece of land always follows the title. Ownership over the suit property could not be proved by the plaintiff with reference to location of MEP No.1630. Land in question has not been found to be the property bearing MEP No.1630. Plaintiff could not prove the possession on the site in question. The suspicion has been found by the Courts below vis-a-vis *Bahi* writings brought on record as Ex.PW-7/A and Ex.PW-7/B. The aforesaid documents give wayward location, if read in context of statements of PW-Beni Madho, PW-4 Ram Avtar and PW-7 Pehlad Ram. Allotment of MEP No.1630 in favour of plaintiff is an admitted fact, but it has not been proved whether plaintiff obtained possession of the property from the Department after allotment of the MEP No.1630? No evidence has been brought on record showing delivery of possession of MEP No.1630 by the custodian in favour of the plaintiff.

[19]. Learned counsel for the appellant has drawn the attention of the Court towards Mark A-30 i.e. a letter No.4844 dated 31.01.1963 issued by Administrator, Municipal Committee, Narnaul on the subject of construction of Town Hall in which Mali Ram was asked to produce documents of allotment of the site. Even though this document remained as a mark document but the perusal of the same also revealed that no proof of allotment was produced by Mali

Ram. No evidence was received from the custodian. *Khasra* number could not be ascertained from Tehsil office also. A recommendation was made for acquisition of the land. Identity of this land cannot be equated with the land in question in any manner as no dimensions are forthcoming in respect of land which was recommended for acquisition.

[20]. Learned counsel for the appellant then referred to Ex.PW-9/F i.e. a letter issued by General Assistant, Narnaul to the Deputy Commissioner in respect of property of Town Hall claiming the property to be MEP No.1630. This document also does not advance the case of the plaintiff-appellant, firstly the dimensions of the property are not forthcoming, nor the suit land can be equated with the property mentioned in the letter. These documents have not been proved on record. In the context of tallying the property MEP No.1630 to be that of the suit land which is further referable to the land for construction of Town Hall and was ever recommended for acquisition.

[21]. At last learned counsel for the appellant made strenuous effort to appoint a Local Commissioner to demarcate the property in question and place reliance upon **Janab Nizar Ahmed Sheriff vs. A. Kannan, 1994(4) CivCC 125** and **Punjab Wakf Board, Ambala Cantt. vs. Shri Neeko, 2004(3) RCR (Civil) 506.**

[22]. This Court has considered the submission and is not inclined to interfere in the aforesaid prayer solely on the ground that

plaintiff has failed to demarcate the property before the Courts below, rather has led conflicting evidence on record in the form of sale certificate, line plan and Ex.PW14/A i.e. site plan proved during course of trial. In the event of acceptance of such oral prayer at this stage the same will amount to create evidence in favour of the plaintiff which he in his own turn did not adduce to satisfy the Courts below vis-a-vis. existence of MEP No.1630 with reference to the suit land. Since the plaintiff has led contrary evidence to his claim based on sale certificate, therefore, the prayer at this stage is not legally feasible to entertain.

[23]. On the other hand, learned counsel for the respondent has vehemently argued that the land existing on the spot cannot be connected with MEP No.1630 by any stretch of imagination. The weakness in the case of the defendants cannot be read for the benefit of the plaintiff as the plaintiff has to stand on the strength of his own case. Learned counsel further argued that land in question may or may not be found in the ownership and possession of the defendant, but the plaintiff cannot seek possessory right over the suit land under the garb of allotment of MEP No.1630 by the custodian.

[24]. Learned counsel referred to Ex.DW10/G in respect of allotment of MEP No.1631 by the Ministry of Rehabilitation. In the sale certificate in respect of MEP No.1631, dimensions are shown in which towards North property No.1630 has been shown, towards South gali has been shown, towards East *pacca* road has been

shown and towards West property No.1632 has been shown. Learned counsel further argued that MEP No.1632 was owned by Mali Ram-plaintiff and subsequently he sold the same. Property No.1631 is owned by Mahabir Parshad. Apparently the connectivity of MEP No.1630 could have been projected by the plaintiff with reference to existing of property No.1631 owned by Mahabir Parshad. MEP No.1630 is situated towards North of this property, but no evidence has been brought on record on this link aspect.

[25]. Learned counsel for the respondent has relied upon **Munshi Ram of Firozpur Cantt. vs. Shiv Dayal, 1984 HRR (19), Surja Mal vs. Har Narain, 1996(1) HRR 454** and **Union of India and Ors. vs. Vasavi Co-op. Housing Society Ltd. & Ors., 2014(1) Law Herald SC 167** to contend that onus was on the plaintiff to tally the allotted land with that of suit land and he has to stand on the strength of his own case and relief cannot be granted on the weakness of the defence.

[26]. Ex.DW-2 is the sale certificate of MEP No.1632. The dimensions of MEP No.1632 are as under:-

East	:	Gali, MEP No.1631
West	:	Plot MEP No.1635
North	:	Kothi of Narinder Singh
South	:	Rasta

Apparently from the placement of these properties viz. MEP Nos.1631 and 1632, no effort has been made by the plaintiff to locate existence of MEP No.1630. The voluminous record produced

on record of the suit in no way pointed out existence of MEP No.1630 in respect of which possession was ever delivered to the plaintiff.

[27]. Respondent No.1-Shyam Sunder died during the pendency of the present appeal. His legal representative have been brought on record. Similarly legal representatives of Mali Ram have also been brought on record vide order dated 01.03.1995.

[28]. As per admission order dated 30.11.1987, non-consideration of documents Ex.PW-3/7 and Mark A-30 were considered to be grounds for admission of the appeal. Civil Misc. No.3825-C of 2014 seeking to place on record judgments dated 17.11.2011 (Annexure A-1) and 05.03.2012 (Annexure A-2) does not advance the case of the plaintiff in the context of identification/demarcation of the property in any manner. The judgments Annexures A-1 and A-2 even if taken to be in consideration are not sufficient to earmark MEP No.1630 in the context of suit land. Judgment dated 05.03.2012 Annexure A-2 is in the context of collusion of the employees of the Municipal Committee which required inquiry but in any case the scope of this appeal cannot be enlarged to cover any other hypothesis in which collusion was found to be a factor in a pending litigation between Shyam Sunder Purohit and Municipal Committee, Narnaul. The appellant is not at all party to the aforesaid litigation, nor any such subject matter can be made part of inquiry therein.

In view of aforesaid Annexures A-1 and A-2 as sought to be produced on record by way of additional evidence are ruled out from consideration.

[29]. Instant Regular Second Appeal was filed under Section 41 of the Punjab Courts Act. In view of Full Bench judgment of this Court in **Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I**, framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clauses (a) to (c) of Section 100(1) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*".

[30]. No material question of law has been framed, but still the question considered by this Court in this appeal is framed as under:-

“Whether plaintiff is entitled to decree of permanent injunction solely on the basis of allotment of MEP No.1630 without proof of delivery of possession in his favour and without proper earmarking of the property vis-a-vis adjoining properties?

[31]. This Court has deliberated upon the issue of permanent injunction merely on the strength of allotment. Allotment of MEP No.1630 in favour of plaintiff has not been disputed by any of the parties, rather allotment of property has been proved in favour of the plaintiff by way of sale certificate Ex.PW-3/2 on record. This property carries specific dimensions as shown in the sale certificate as under:-

East	:	Nadi
West	:	MEP No.835
North	:	MEP No.834
South	:	Rasta

[32]. However instead of filing the suit in question on the basis of aforesaid dimensions, plaintiff has filed the suit on the basis of dimensions of the suit land as under:-

East	:	Rasta/Road
West	:	Rasta vacant land
North	:	MEP No.535
South	:	Nadi and Rasta

In a way only dimension towards South is tallying that too without Nadi.

[33]. In view of aforesaid the suit land cannot be equated with the property allotted to the plaintiff by the aforesaid sale certificate Ex.PW-3/2. Further reliance place by the plaintiff on documents viz. line plan and site plan proved on record as Ex.PW-14/A also do not tally with the dimensions of the property in any manner. In nutshell plaintiff has miserably failed to tally the suit land with that of property

MEP No.1630 allotted to him. The law point as considered by this Court also has to be answered in negative.

[34]. No law point worth consideration is involved in this appeal. The controversy is solely rests upon factual details emerging on record by way of different documents which on consideration do not give any overlapping measurements of suit with that of property MEP No.1630 allotted to the plaintiff-appellant by sale certificate Ex.PW-3/2.

[35]. Resultantly, this Court is not in a position to accept the claim of the plaintiff in the context of suit land being MEP No.1630. Hence this appeal is found totally bereft of merits and the same is accordingly dismissed.

October 14, 2015

Atik

(RAJ MOHAN SINGH)
JUDGE