

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

RSA-3025-2010 (O&M)

Date of Decision: 21.12.2015

SURINDER SINGH

.....Appellant

Vs.

PRITAM SINGH AND ORS.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.S. Ranghi, Advocate
for the appellant.

Mr. S.S. Majithia, Advocate
for the respondents.

- 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) Defendant is in second appeal against judgment and decree dated 20.1.2010 passed by Additional District Judge, FTC, Ludhiana, whereby appeal filed by the plaintiff against judgment and decree dated 25.1.2008 passed by the Civil Judge (Junior Division), Ludhiana has been accepted and defendant has been given two months' time to shift the workshop in dispute from the residential locality.

2) Plaintiffs filed suit for permanent injunction against the defendant restraining him from changing the nature of the

property from residential to commercial by opening and operating the Motor Workshop and service station in the suit land. The suit of the plaintiff is based on the allegations that plaintiffs are inhabitants of Rajguru Nagar Extension which is a residential locality having no commercial or industrial activity in the locality. Plaintiffs claim themselves to be active members of Rajguru Nagar Extension Welfare Society. Plaintiff no.1 is the President of the same. Plaintiffs alleged that defendant without any authority of law and without obtaining any prior permission from the competent authorities has threatened to change the nature of plot no.24 from residential to commercial by opening and running a motor workshop-cum-service station. The plaintiffs alleged that the inhabitants of the locality would suffer constant nuisance and noise pollution and the threatened action of the defendant would result in accumulation of dirty water and would result in stagnation and the carbon emitted from the vehicles would adversely affect the health of the residents of the locality. The accumulation of stagnant water would give rise to breeding of mosquitoes and flies which may spread epidemic. Plaintiffs further alleged that the defendant has threatened to proceed ahead with the workshop and he has already stored building material and the mason and labour have tried to construct and install the requisite construction for running motor workshop on 28.12.2002. With this background, suit came to be filed.

3) Suit was contested by the defendant on all counts including locus of the plaintiff to file the present suit and jurisdiction of the Court. Defendant alleged that the plaintiffs are not the inhabitants of the locality nor they are members of the society plaintiff No.6. Defendant has contended that motor workshop-cum-service station being run by defendant, does not create any air or noise pollution. Proper arrangements have been made by the defendant for the drainage of the water being used for washing of the vehicles by digging a pit of considerable depth which is capable of soaking the water used for washing purposes. Defendant further alleged that there is no storage of any dirty water nor there is any air or noise pollution. Defendant has also contended that there is a dairy farm running in the vicinity on one side of the plot of the defendant and small scale industry of the present nature is of no impediment in the present set of circumstances. Defendant has claimed that he is also residing in the same plot with his family and is earning his livelihood by operating the service station by washing small vehicles like cars and scooters. He has constructed and installed a paraphernalia to run the workshop on 28.12.2002 and service station is in operation and is in working condition prior to filing of the suit.

4) After filing of replication, following issues were framed by the trial Court:-

*“(1) Whether the plaintiffs are entitled to permanent injunction as prayed for?OPP
(2) Whether the suit is maintainable in the present form?OPP*

- (3) Whether the plaintiffs have got locus standi to file the present suit?OPP*
- (4) Whether the plaintiffs have not come to the court with clean hands?OPD*
- (5) Whether the Civil Court has got the jurisdiction to entertain and try the present suit?OPP*
- (6) Relief.”*

5) Both the parties led evidence. Trial Court dealt issues no.1 to 3 jointly and held the same against the plaintiffs. Issue no.4 and 5 were not pressed by the defendant and the same were held in favour of plaintiff. Resultantly, the suit was dismissed.

6) Plaintiff being aggrieved by the judgment and decree of the trial Court, filed appeal before the lower appellate Court and the same has been accepted by the Lower Appellate Court vide judgment and decree dated 20.1.2010.

7) In para no.7 of grounds of appeal, the appellant has framed the following substantial questions of law:-

- (i) Whether the judgment and decree passed by the first Appellate Court is perverse and erroneous innature?*
- (ii) Whether the running of the workshop-cum-service station causes any water pollution or noise pollution?*
- (iii) Whether any reliance can be placed on the oral testimony of the respondents alone to adjudicate the matter in dispute?”*

8) I have considered the submissions made at the bar and have also perused the material on record.

9) The trial Court dismissed the suit of the plaintiff on the ground that it is an admitted fact on record that there is no sewerage system provided in the area and all the residents of locality have their own disposal system of dirty water by means of septic tanks in their properties.

10) The allegations of the plaintiffs are that disposal of water in septic tank would pollute the underground water which was not considered a ground for accepting the claim of the plaintiff by the trial Court. Trial Court considered the claim of the defendant that he is only repairing and washing the vehicles and that does not involve running of any such heavy motors or requires an arrangement of jet pump or water motor etc. The water motor and jet pump provided in normal residences is suffice to meet the requirements of such business. Trial Court held that there is no source of nuisance or pollution in any manner and plaintiffs have failed to make out any case for interference and for grant of permanent injunction as no irreparable loss would be caused to the plaintiffs, because the likely injury is not proved to be sufficient for the grant of injunction against the defendant.

11) Lower Appellate Court, on the other hand, appreciated that accumulation of dirty water after washing the vehicles is likely to get stagnated which will result in pollution and would cause health hazards to the plaintiffs. The running of motor workshop shall also result in causing noise pollution to the inhabitants and

will also cause traffic hazards in the residential area and the streets which are only 20 feet wide.

12) Admittedly the colony is a residential colony and this fact has been admitted by the defendant witness i.e. Harpreet Singh, DW1. There is no other workshop operating in the area except the workshop of the defendant and defendant has no right to convert the residential colony into commercial one without any permission from the competent authority. The defendant has not been able to prove any permission granted by the competent authority nor anything has been proved by the defendant that the plaintiffs are inimical towards the defendant due to any party faction in the locality. In the absence of any such evidence, mere allegation cannot suffice to prove that the plaintiffs are inimical towards the defendants. No complaint was ever made by the defendant to prove that the plaintiffs have made any false complaint against him due to any party faction in the village or the plaintiffs are in the habit of making false complaint against him. The trial Court has relied upon the report of Sub-Divisional Magistrate. The report cannot be relied inasmuch as that the Sub-Divisional Magistrate has not recorded any statement of witnesses from the locality, moreover the report does not deny the fact that workshop is not in operation in the residential locality nor he denies that running a workshop is not a commercial activity. The report submitted by Sub Divisional Magistrate in the absence of any such statement of the witnesses cannot be relied upon.

13) Learned counsel for the appellant has contended that the decree has been granted beyond the pleadings of a suit for permanent injunction in which prayer was for restraining the defendant from changing the nature of the plot in question. Learned counsel also relied upon the order of the Sub-Divisional Officer passed under Section 133 Cr.P.C. Section 91 CPC deals with public nuisances and other wrongful acts affecting the public. In such a situation, a suit for declaration and injunction can be filed by the Advocate General or with the leave of the Court by two or more persons, even though no special damage has been caused to such person by reasons of such public nuisance or other wrongful act. However, nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions. Perusal of the record reveals that admittedly the locality is a residential locality and the alleged workshop has been started by the defendant from 1.1.2003. There is no sewerage system provided in the area. The suit itself came to be filed on 7.1.2003. Perusal of statement of PW1 and PW2 reveals that the plaintiffs along with other inhabitants of the locality and social welfare society have already made complaints to the concerned authorities in this regard. Even in terms of Section 91 CPC, suit can be filed by two or more persons, even though no special damage has been caused to them by reason of such public nuisance and nothing in this section shall be deemed to limit or affect any right

of suit which may exist independently of the provision made in Section 91 CPC.

14) In the instant case having resorted to the process of Section 133 Cr.P.C., the suit came to be filed later on because provisions in terms of Section 133 Cr.P.C are of emergency nature. Existing nuisance cannot be made subject matter of Section 133 Cr.P.C. proceedings, therefore, a regular remedy was maintainable and that can only be in the form of seeking injunction. Even as per the statement of DW3, the workshop was started by the defendant on 1.1.2003 and the witness did not know as to what provision was made by the defendant for disposal of dirty water. However, he admitted that there is no sewerage system in the locality. The suit itself came to be filed on 7.1.2003, therefore, permanent injunction is the appropriate remedy which could have been resorted to by the plaintiffs in seeking restraint against such installation which was in offing at the relevant time. Even the application in terms of applicability of Section 91 CPC is not mandatory in nature in terms of Section 91 (2) CPC. A public nuisance can be remedied at the instance of the inhabitants of the locality which have their own right of suit independently of provision in terms of Section 91 CPC. Moreover, Section 91 CPC has not been made a ground of defence in the written statement and the same has been raised for the first time in regular second appeal which, in considered opinion of this Court, cannot be entertained. Even otherwise, DW3 in his cross-examination has

admitted that the alleged act of installation started on 1.1.2003 and suit came to be filed on 7.1.2003, therefore, any violation made even after 7.1.2003 can be taken in judicial notice by the trial Court, particularly when scope of Section 133 Cr.P.C. is limited to emergency proceedings where cause of nuisance is immediate cause, requiring interference at the level of Sub Divisional Magistrate. If the cause is already existing at the time of making such complaint, then the same can be remedied by means of regular procedure and filing of the suit is the appropriate remedy. Even if, suit for permanent injunction was filed on 7.1.2003 in respect of alleged violation that started on the spot on 01.01.2003 i.e. 6 days prior thereto, the Court could have taken judicial notice of it and in considered opinion of this Court, cognizance has been rightly taken by the lower appellate Court in decreeing the suit. Commercial activity of the present type, cannot be allowed to be operated from residential zone particularly when no civic amenities have been provided on the site of the plaintiff.

15) Having deliberated upon the questions as formulated by the appellant in the grounds of appeal, I am of the view that no such question can be appreciated. Question no.1 is not a substantial question of law as the findings recorded by the appellate Court cannot be termed to be perverse in nature on the strength of material available on record. As regard to Question No.2, the running of workshop-cum-service station would definitely cause water and noise pollution in the area. Question

no.3 is also a question of fact on overall appreciation of material on record, this Court is of the view that running of commercial activity in residential zone cannot be allowed without leave of the competent authority. The plaintiffs have already moved the competent authority in this regard but having waited for remedial steps at the instance of competent authority, filing of suit is competent. Dismissal of application under Section 133 Cr.P.C is no ground to restrict the claim by means of permanent injunction as proceedings in terms of Section 133 Cr.P.C. are purely of emergency nature and do not apply in case of already existing violation that can only be remedied by way of regular procedure. Plea of Section 91 CPC has been raised for the first time in appeal. Even if the suit could have been filed by the Advocate General or by the two or more persons even though no special damage has been caused to them by reasons of such public nuisance, sub-Section (2) of Section 91 fully provides that nothing can affect any right of suit of any person which may exist independently of the provision of Section 91 CPC. In the light of aforesaid fact, this Court does not deem it appropriate to interfere in the judgment and decree passed by the lower appellate Court in decreeing the suit at appellate stage.

16) Resultantly, this appeal is dismissed.

21.12.2015
SwarnjitS

(RAJ MOHAN SINGH)
JUDGE