

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1856 of 2011 (O&M)
Date of Decision.12.10.2015

Sushila DeviAppellant

Versus

Municipal Council, Rewari and othersRespondents

2. RSA No.1872 of 2011 (O&M)

Sumitra Devi and anotherAppellants

Versus

Municipal Council, Rewari and othersRespondents

Present: Mr. Jitender K. Sehrawat, Advocate for
Mr. N.S. Shekhawat, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J.

C.M. Nos.5226-C in RSA No.1856 of 2011 and C.M. No.5271-C of 2011
in RSA No.1872 of 2011

For the reasons stated in the applications, delay of 173 days
in refiling the respective appeals is condoned.

Applications are allowed.

C.M. Nos.5227-C in RSA No.1856 of 2011 and C.M. No.5272-C of 2011
in RSA No.1872 of 2011

For the reasons stated in the applications, permission for
making good the deficiency in the court fee is granted.

Applications are allowed.

RSA Nos.1856 and 1872 of 2011

1. The second appeals have been filed in the year 2011 and have been adjourned from time to time on request of the counsel for the appellants. There has been no appropriate assistance from the counsel appearing on behalf of the appellants. I have gone through the papers and proceed to pass the following orders.

2. The appeals are at the instance of the plaintiffs who had filed the respective suits seeking injunction. The injunction was sought against the Municipal Council, when notices of encroachment had been issued against the respective persons alleging that they had caused the constructions to be made on the property belonging to the Municipal Council. At the trial, there had been demarcation of the properties respectively claimed by the parties with the help of a local Commissioner. The reports evidenced encroachment into the property of the Municipal Council and the Court found that relief of injunction cannot be sought against the Municipal Council in respect of property that belonged to it. Evidently the plaintiffs did not avail themselves any opportunity to engage in a proper response to the notices and adopt the provisions of appeal as prescribed under the local legislation. Instead they had come to the Civil Court seeking for the relief of injunction. Without proving the title to the property in respect of which constructions were said to have been done, there was no scope for the relief of injunction. The court found that the encroachments had been clearly established and there was no merit in the claim for injunction.

3. The substantial ground urged is that the demarcation had not been properly done and the commissioner's report could not have been relied upon. I cannot find any error in the judgments of the courts

below adverting to the commissioner's report and finding that the plaintiffs cannot seek for the relief of injunction. It is the further contention that the constructions have been made more than 6 years prior to the notices and the Municipal Council had also raised house tax in respect of the property constructed thereon. A plea of estoppel cannot be urged against a public body by the only fact that assessment to property taxes had been made and the construction must be taken as legitimate. It is not as if that the entire construction is an encroachment. It shall be taken as obtaining to such extent as has been noticed at the trial.

4. I find no substantial question of law as arising in these second appeals. They are dismissed.

(K. KANNAN)
JUDGE

October 12, 2015
Pankaj*