

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3928 of 2011 (O&M)
Date of Decision : 20.10.2015

Rattan LalAppellant

Versus

Municipal Council, Rewari and anotherRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Arun Yadav, Advocate
for the appellant.

Mr. M.K. Verma, Advocate
for the respondents.

Surinder Gupta, J.

This is Regular Second Appeal against concurrent findings of the Courts below whereby suit filed by the plaintiff (appellant) seeking relief of permanent injunction to restrain the defendant i.e. Municipal Council, Rewari from demolishing the tin shed erected by him on western side of the shop, taken by him on rent from Red Cross Society, shown in letters 'ABCD' in the site plan.

2. In later part of judgment parties to suit will be referred as plaintiff and defendant as per the civil suit.

3. The plaintiff's case, in brief, is that on the northern western side of shop taken by him on rent from Red Cross Society, there is space shown as ABCD, owned by Smt. Usha Devi d/o Lala Nemi Chand Jain. The plaintiff has taken the said space on lease from Smt. Usha devi for a period of 30 years on lease money of ₹500/- per annum vide lease deed dated 02.04.2002. The plaintiff is running a *Dhaba* in shop no. 27 and

after taking the portion shown as ABCD on lease, he installed tin shed, *tandoor*, water connection and also kept tables and chairs for the customers. The defendants intend to demolish the wall and tin shed raised by the plaintiff and if they succeed, it will cause irreparable loss and damage to him.

4. The defendants in written statement admitted that shop no. 27 was rented out to plaintiff by the Red Cross Society. It was denied that portion ABCD on the northern western side of shop was owned by Smt. Usha Devi. In fact this portion is a part of green belt/*rasta* which is in front of the houses of Judicial Officers on the Circular Road and vests in the Municipal Council, Rewari. Smt. Usha Devi has no concern with the said portion. As per judgment dated 13.02.1939 passed by Sh. I.U. Khan, then Additional District Judge, Hisar in civil appeal titled as 'Lala Bishambar Dayal vs. Lala Munshi Lal', the adoption of Lala Munshi Lal as adopted son of Rai Bahadur Makhan Lal was declared null and void. Smt. Usha Devi daughter of Lala Nemi Chand Jain son of Lala Munshi Lal, as such, has no concern with the suit property. The suit property was declared as public street vide resolution no. 30 dated 30.04.1978 by the Municipal Council, Rewari and being passage, the suit property vests in Municipal Council, Rewari.

5. The claim of plaintiff was contested, controverted and denied *inter alia* pleading that he had tried to encroach upon the disputed portion by putting tables, *tandoor* etc. which have been removed, except the tin shed, before filing the suit. No one has right to encroach upon the green belt/*rasta*. The defendants

have no enmity with the plaintiff and are performing their duties restraining the plaintiff from encroaching upon the public property.

6. Pleadings of the parties led to the framing of issues, as follows:-

- (i) Whether plaintiff is entitled to the relief of permanent injunction restraining the defendants from interfering in possession of plaintiff over the suit land as detailed in the plaint? OPP
- (ii) If during the pendency of the suit, defendants succeeded in demolishing the four-wall, tinshed and closing shutter in the suit property in that eventuality, whether the plaintiff is entitled to restoration of prior position by way of mandatory injunction as prayed? OPP
- (iii) Whether the suit of the plaintiff is not maintainable in the present form? OPD
- (iv) Whether plaintiff is estopped by his own act and conduct to file the present suit? OPD
- (v) Whether the plaintiff has not come with clean hands, if so, to what effect? OPD
- (vi) Whether the suit is bad for mis-joinder and non-joinder of the necessary parties? OPD
- (vii) Relief.

7. Additional Civil Judge (Senior Division), Rewari while dismissing the suit of plaintiff observed that the disputed site is a passage. PW-2 Kishan Chand had admitted that this site was being used by the public. He had also admitted that from busstand and Model Town *Chowk* till entrance of the officers colony, there was a wall of Municipal Committee and the site by the side of road was developed as park and having greenery. The site in

dispute was declared as passage by the Municipal Council and Smt. Usha Devi, from whom the plaintiff alleged to have taken the disputed site on lease, had never raised any objection *qua* the resolution or challenged the same. The plaintiff had in fact taken the shop no. 27 on rent from Red Cross Society. No approved site plan of the shop taken on rent was produced by the plaintiff. However, even if this plea of the plaintiff is believed that on western side of the shop there was a shutter, this reflects that beyond that shutter there was public property. Otherwise, the Red Cross Society would not have kept an opening of the shop towards property of some other person.

8. In view of the judgment and decree passed by Additional District Judge, Hisar, holding the adoption of Lala Munshi Lal by Rai Bahadur Makhan Lal as invalid, Usha Devi, who is legal heir of Lala Munshi Lal, was held to be having no concern with the suit property in her capacity as heir of Lala Munshi Lal. Both the Courts below observed that the suit property was part of public passage and the plaintiff has no concern with the same.

9. I have heard learned counsel for the parties, perused paper-book and the lower Court record with their assistance.

10. The entire reliance of the plaintiff is on a lease deed allegedly executed by one Parjan Kumar Jain as attorney of Usha Devi. The plaintiff had failed to prove that Usha Devi was owner of the suit property. As per copy of *jamabandi* for the years 1983-84 (Ex. D-8) and 1988-89 (Ex. D-9), Usha Devi d/o Lala Nemi Chand Jain is recorded as having 26/79 share in the land

measuring 3 *kanals* 19 *marlas*. As per *jamabandi* for the year 1966. Lala Nemi Chand Jain son of Lala Munshi Lal adopted son of Rai Bahadur Makhan Lal was recorded as owner of the land measuring 3 *kanals* 19 *marlas* which was shown to be in possession of District Board. This fact is not disputed that plea of Lala Munshi Lal that he was adopted son of Rai Bahadur Makhan Lal, was discarded in Civil Suit No. 79 of 1937 by the Appellate Court, Hisar. In view of this, firstly inheritance of suit land could not travel from Lala Munshi Lal to Usha Devi. Secondly, it was District Board, which was shown to be in possession of 3 *kanals* 19 *marlas* and there is nothing to show that possession of land, if suit land was part of that land of 3 *kanals* 19 *marlas*, was ever surrendered by District Board. In view of admission of PW-2, the suit property was being used by public. The attempt by plaintiff to use the suit property, because it adjoins his shop, clearly depicts his intention to encroach upon Municipal land and both the Courts below have committed no error of law and fact while declining the relief of injunction to the plaintiff.

11. No question of law, what to talk of substantial question of law requiring determination, arises in this appeal, which has no merit.

Dismissed.

October 20, 2015
jk

(SURINDER GUPTA)
JUDGE