

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA No.462 of 2011 (O&M)

Date of decision: 18.08.2015

Amar Singh

..... Appellant

versus

Municipal Committee, Rewari

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.R.N.Lohan, Advocate for the appellant
Mr.M.K.Verma, Advocate for the respondent

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

This appeal is filed against the judgment and decree dated 29.10.2010, passed by the learned Additional District Judge, Rewari, affirming the judgment and decree dated 15.2.2008, passed by the learned Civil Judge, Junior Division, Rewari, vide which, the suit of the plaintiff for permanent injunction and mandatory injunction was dismissed.

Briefly stated, the plaintiff had filed a suit for permanent injunction, restraining the defendant from raising any construction or interfering in possession of the plaintiff over the suit property, mentioned in para No.1 of the plaint. Mandatory injunction was also sought that if any construction is raised during the pendency of the suit or illegal possession is taken, appropriate

mandatory injunction be also granted.

Brief facts of the case are that according to the plaintiff, he is owner in possession of the plot, situated at circular road near Jain High School and Government Hospital, Rewari, on the basis of sale deed No.1383 dated 23.6.1994. The said plot was purchased from one Krishan Kumar for Rs.8,04,500/-. Plaintiff got the site plan sanctioned for raising the construction upon the eastern portion of the said property from the Municipal Committee on 5.7.1994. In the site plan, remaining portion of the suit property was mentioned as vacant plot. Defendant wants to encroach upon the said vacant portion.

In the written statement, the Municipal Committee took the stand that it is in possession of the suit property and that public toilets exist upon the same.

Learned Civil Judge, Junior Division, Rewari dismissed the suit holding that the sale deeds are not proved by examining one of the attesting witnesses and that plaintiff had admitted that public toilets exists between the disputed property and Civil Hospital, Rewari. In the site plan attached with the plaint, the vacant land between the property of the plaintiff and Civil Hospital is nowhere shown. The learned Civil Judge, Junior Division further observed that in fact plaintiff got the site plan sanctioned on 5.9.1994 regarding the area measuring 32.16 square meters. For remaining 15 square yard of the area, another site plan was sought to be got sanctioned in the year 2000 but the same was rejected on the ground that toilets of the Municipal Committee exist on the said property. Copy of the

order Ex.D9 of the Collector dated 8.8.2001 shows that an appeal filed by the plaintiff to sanction site plan was rejected. It was held that public toilets exists on the suit property since the year 1994.

In the appeal, the plaintiff led additional evidence to prove that the disputed property is part of khasra No.2356. However, the appellate Court held that the said khasra no. is not connected with the khasra no. mentioned in the plaint to show that during consolidation, khasra nos. of the suit property were allotted in lieu of the old khasra nos.

I have heard learned counsel for the parties and have also carefully gone through the file.

The perusal of the file shows that lower Court returned the findings of fact to the effect that public toilets exists on the part of the property regarding which injunction was sought. In fact, plaintiff claims two parcels of land, upon one of which he has raised the construction after getting the site plan sanctioned. It is apparent that dispute is regarding the adjoining portion falling between constructed portion of the plaintiff and the Civil Hospital, where the public toilets of the Municipal Committee exists. Plaintiff cleverly incorporated the same, claiming it to be one suit property. However, these are two different parcels regarding which the dispute exists. There is no dispute regarding the constructed portion in possession of the plaintiff. Regarding remaining vacant portion, even the plaintiff had admitted that public toilets exists on that property. The site plan regarding 15 square yards of area which plaintiff claims to be vacant area and part of the property purchased by him through the sale

deed, was rejected by the Municipal Committee . Appeal against the same was also rejected. It is a simple suit for permanent injunction. No declaration was sought regarding the title. Once it is found that public toilets exist on the said property, no injunction could be granted. Therefore, only question of fact was involved, which has been determined by both the Courts below. No question of law much less substantial question of law arises. Even on merits, there is no error in the judgment of both the Courts below.

Consequently, the appeal stands dismissed.

In view of disposal of the appeal, all the pending applications also stand disposed of.

18.08.2015

gk

**(Kuldip Singh)
Judge**