

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

RSA No.301 of 2015(O&M)
Date of decision: 27.01.2015

Municipal Corporation, Faridabad

...Appellant

Versus

Tara Chand Vaishist

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Devinder Singh, Advocate for the appellant.

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?

ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 16.07.2013. Appeal preferred against the said decree was partly accepted and defendant was restrained from causing any interference in the peaceful possession of the plaintiff over the suit land on 05.09.2014. This is how, defendant is before this court, in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiff, he prayed for a decree for injunction, restraining defendant from causing any interference or obstruction in his peaceful possession over the suit land. And also from causing any encroachment on any

part thereof. It was averred that plaintiff is the owner in possession of plot bearing No.14, comprised of four shops and at the back of these shops, there was a cattle shed and living quarters adjoining the northern wall, marked by letters ABCD, shown in red colour in the site plan, situated within the area of village Sihi, Tehsil Ballabhgarh, District Faridabad. It was maintained that plot in question was purchased by father of the plaintiff Gaya Lal son of Dal Chand from the erstwhile Gram Panchayat of village Sihi for a consideration vide receipt No.27, dated 30.09.1962. Final writing as regards the sale was signed by the then Sarpanch i.e. Pt. Prashadi Lal on 30.11.1963. Construction was raised by father of the plaintiff immediately. And post his death, plaintiff has become the owner in possession of the said plot. Further, he has obtained the electricity and water connections, that is duly installed at the site. Still further, in the year 2002, official of Municipal Corporation, Faridabad, on inspection of the site in question, certified that plaintiff had not encroached upon any part of the land that vests in the Municipal Corporation, Faridabad. However, on 16.04.2009, officials of defendant arrived at the site along with JCB machine and illegally demolished a part of all the four shops. And as plaintiff was even threatened to be forcibly dispossessed from the suit property, thus, the suit.

In defence, it was pleaded, inter alia, that construction of the shops that were raised by the plaintiff

upon the plot in question was admitted, however, in the process he had encroached upon a public path. Further, no approval of the Deputy Commissioner/Director of Panchayat was sought before the site in question was purchased by the plaintiff. Despite notice served upon the plaintiff on 30.03.2009, he did not comply with the directions contained therein. It was maintained that defendant was fully entitled to remove the encroachment that was set up by the plaintiff upon a public street in terms of the Haryana Municipal Corporation Act, 1994. Accordingly, defendant prayed for dismissal of the suit.

Trial court, on a consideration of the matter in issue and the evidence on record, found that plaintiff had failed to lead any evidence to show that he indeed was the owner of the suit property. Receipt (Ex.P2), relied upon by the plaintiff, to claim title over the suit land could not be read into as the document was not registered in terms of the requirement of Registration Act. The electricity bills etc. produced by the plaintiff were hardly an evidence to prove the ownership of the plaintiff. Since, plaintiff himself admitted that the defendant had demolished the shops that existed upon the suit land on 16.04.2009, the relief of injunction in this regard had become infructuous. Accordingly, the suit was dismissed.

Being dissatisfied with the decree, plaintiff preferred an appeal. First appellate court reviewed the matter in issue,

evidence on record and on an analysis thereof found that father of the plaintiff had purchased a plot measuring 12 marlas from the then Gram Panchayat vide receipt Ex.P1. Plea of the defendant that Gram Panchayat had not obtained any permission from the Director of Panchayat before the said plot was transferred, informing the predecessor-in-interest of the plaintiff, was repelled as a period of more than 47 years had already elapsed. Accordingly, it was observed that it could not be said that plot in question was sold by Gram Panchayat rightly. And defendant (Municipal Corporation, Faridabad) having stepped into the shoes of the Gram Panchayat was estopped from assailing its own sale. As regards the encroachment that was purported to have been set up by the plaintiff, it was observed that there was actually no encroachment at the instance of the plaintiff (Ex.D1). Document (Ex.D1) was produced by none other than the defendant and the same suggests that the plaintiff had not encroached upon any portion of MCF land. And in fact, owners of plot Nos.3, 4, 6, 7 & 13 had encroached upon the land of the defendant and had promised to remove the said encroachment. Accordingly, it was concluded that the demolition carried out by the defendant was also not justified. Since shops in question already stood demolished, it was observed that injunction being claimed as regards demolition has become infructuous, In so far as grievance of the

defendant, that the plaintiff was owner of a plot measuring 12 marlas but the land, that was shown to be in his possession in the site plan, was more than 14½ marlas, it was observed that even if, that was true, plaintiff could not be dispossessed from the excess portion without resorting to the procedure known to law i.e. first demarcating the portion, finding out encroachment, if any, then give notice and remove the alleged encroachment. As no such procedure was followed, plaintiff could not be dispossessed from the said portion. Accordingly, defendants were enjoined from interfering in the peaceful possession of the plaintiff. Thus, the appeal was partly accepted.

I have heard learned counsel for the appellant at length and perused the RSA paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. All what he has urged is that plaintiff had indeed encroached upon a portion of a public path. Though, he was owner of a site measuring 12 marlas only but the site plan on record showed that he was in possession of a land measuring 14½ marlas. And a due process was being followed to retrieve the encroached portion.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant

appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Needless to assert, once plaintiff had proved himself to be in possession of the suit property, he was entitled to the injunction that has been granted by the first appellate court. First appellate court indeed observed **“It is claimed by counsel for respondent-defendant that plaintiff has claimed to have purchased property 12 marlas but land shown in site plan is more than 14½ marlas. If that is true, then also, he cannot ejected or dispossessed therefrom without adopting due procedure of law i.e. first demarcating portion, finding out encroachment, if any, then giving notice and removing it. Nothing of this procedure has been adopted. Without that, he cannot be dispossessed therefrom.”** In the wake of the position, as sketched out above, need it be said that if plaintiff had indeed encroached upon a property that vests in the defendant (Municipal Corporation, Faridabad), the Corporation shall be at liberty to proceed to remove the purported encroachment in accordance with law. Learned counsel for the appellant could not point out as to how the conclusion arrived at by the first appellate court was either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No

question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

January 27, 2015
Rajan

(Arun Palli)
Judge