

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 5543 of 2015 (O&M)
Date of Decision : 16.10.2015

Suresh Kapilla

....Appellant

Versus

Ashok Sehgal

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. V.B. Aggarwal, Advocate
for the appellant.

Surinder Gupta, J.

Appellant-Suresh Kapilla is a tenant on the top floor of house No. 3285 Sector 15-D, Chandigarh. Plaintiff-Ashok Sehgal filed suit seeking relief of mandatory injunction directing the defendant to remove entire unauthorized construction either temporary or permanent in the premises under his possession. The suit was decreed by Civil Judge (Junior Division), Chandigarh and the defendant-appellant was directed to remove the entire unauthorized construction i.e. left hand side bathroom, toilet and temporary tin shed constructed in the verandah of *barsati* area of the second floor of disputed house.

2. Not satisfied, the defendant-appellant filed appeal which was also dismissed by the Additional District Judge, Chandigarh. Against the concurrent findings of Courts below, the defendant-appellant has filed this Regular Second Appeal.

3. It is pertinent to take note that the defendant-appellant is not denying the existence of unauthorized construction which has been ordered to be removed from the second floor of disputed house which is under his possession. He has rather taken a plea that

temporary shed and store were already in existence when the premises was rented out to him. While taking note of the unauthorized construction on the top floor and appreciating the evidence on record, Civil Judge (Junior Division), Chandigarh observed in para 8 of the judgment, as follows:-

“.....Plaintiff also examined PW-2 Jagmohan Singh, Senior Assistant, O/O SDO Building Estate Office, Chandigarh. Above witness has duly proved inspection report Ex.PW2/1, wherein it is specifically mentioned that on the second floor of House No.3285, sector -15D, Chandigarh, a bathroom and toilet as well as temporary tin shed have been constructed and above violations are non sanctionable in nature. It is argued by the plaintiff that he had submitted a revised building plan to the Estate Office, which was rejected due to above non sanctionable violations and intimation in this regard was received by him vide letter Ex.PW2/2. Defendant appeared in the Court as DW-1 and during his cross examination, it is admitted by him that notice under Section 8A of the Capital of Punjab (Development and Regulation) Act, 1952 has been issued by Estate Office, Chandigarh with regard to violations in the demised premises in his possession. He further admitted that if the non sanctionable violations as mentioned above, are not removed, the allotment of property in question can be cancelled by Estate Office under the rules. At page no.4 of his cross examination, it is admitted by the defendant that it is correct that bathroom on the left side and toilet and

temporary shed on the barsati area, which is open to sky, is a non sanctionable violation as depicted in Ex.PW2/1, which is inspection report of SDO Building. From above admission of defendant, it stands duly proved that there is unauthorized construction on the second floor of house in question. Due to above violations, there are chances of resumption of house in question and plaintiff will suffer irreparable loss without fault on his part. The defendant has merely stated that above unauthorized construction was not made by him and it was already in existence when he was inducted as a tenant in the house in question. Even if the unauthorized construction was not made by defendant, the plaintiff cannot be made to suffer due to above construction. Plaintiff being a co-owner has every right to protect his rights in the above house and ask the defendant to remove non sanctionable violations.”

4. It is evident that because of the unauthorized construction and the notice issued by Estate Office, Chandigarh, the building plan submitted by owner of the house was rejected as the building violations could not be regularized. The defendant-appellant had admitted that if non-sanctionable violations are not removed the allotment of property in question can be cancelled by Estate Office under the rules. The defendant-appellant had not denied that bathroom on the left side, toilet and temporary tin shed are constructed on the *barsati* area, which is open to sky and is non-sanctionable violation.

5. Keeping in view the above facts, both the Courts below

have committed no error of law and fact while allowing the claim of plaintiff in suit and giving direction to the defendant-appellant to remove unauthorized construction.

6. Chandigarh is a planned city. Any violation in the building which is not permissible puts the title of the owner in jeopardy as it gives an opportunity to Estate Office to take action to the extent of resuming the plot. The Courts below have rightly held that unauthorized construction has to be removed irrespective of the fact that whether the same has been raised by the defendant-appellant or by anybody else.

7. On perusal of the paper-book and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference. No question of law, what to talk of substantial question of law requiring determination, arising in this appeal, which has no merit.

Dismissed.

October 16, 2015
jk

(SURINDER GUPTA)
JUDGE