

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

RSA-3100 of 2014

Date of decision:19.02.2015

Municipal Corporation Faridabad and anr Appellants

VERSUS

Daya Ram Saini

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Mr. Manoj Kumar Sood, Advocate
for the appellants.

MAHAVIR S. CHAUHAN J. (ORAL)

Challenge in this regular second appeal brought by defeated defendant-Municipal Corporation and its joint Commissioner is to the judgment/decreed dated 09.01.2014, whereby Court of learned Additional District Judge, Faridabad (hereinafter referred to as the "First Appellate Court") has reversed the judgment/decreed dated 25.01.2013 of learned Additional Civil Judge (Senior Division), Faridabad (hereinafter referred to as "trial Court") and has decreed the suit of plaintiff (respondent herein) to seek permanent injunction restraining the appellants from interfering in peaceful possession of the plaintiff-respondent over the suit land.

Learned counsel for the appellants argues that Section 408-C of the Haryana Municipal Corporation Act, 1994 (for short as 'the Act') bars the jurisdiction of the Civil Court and a notice under

Section 408-A of that Act has already been issued to the respondent.

Perusal of the record would reveal that the respondent had approached learned trial Court for grant of a decree by injunction for restraining the appellants from interfering in his possession over the suit land which is part of Khasra No.46/17/2 situated in Village Unchagaon, Tehsil and District Faridabad, claiming that he is owner of that land and has been in possession thereof for the last more than 60 years. Suit was contested by the appellants by filing a written statement wherein all the allegations of the suit were denied and it was asserted that they have been recorded as owners in possession of the suit property; plaintiff is in illegal possession thereof; a notice under Section 408-A of the Act had already been served upon him and jurisdiction of Civil Court is barred under Section 408-C of the Act.

From the pleadings of the parties, learned trial Court framed following issues:

- 1. Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for? OPP.*
- 2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.*
- 3. Whether the present suit is time barred and liable to be dismissed on this ground alone?OPD*
- 4. Whether the jurisdiction of the Civil Court is barred under Section 408(c) of the Haryana Municipal Corporation Act, 1994?OPD.*

5. *Whether the present suit is barred u/s 11 of CPC as resjudicata? OPD*
6. *Whether the plaintiff has no cause of action to file the present suit?OPD*
7. *Whether the plaintiff is estopped from filing the present suit due to his own act, conduct as acquiescence? OPD*
8. *Relief.*

Both the sides adduced evidence and were heard by the learned trial Court. Learned trial Court came to the conclusion that the respondent was not able to establish his plea as regards his ownership and jurisdiction of the civil Court is barred under Section 408-C of the Act. Suit of the respondent was, accordingly, dismissed vide judgment/decreed dated 25.01.2013. Judgment/decreed dated 25.01.2013, however, has been reversed by the learned First Appellate Court in appeal (Civil Appeal No.44 of 28.02.2013) vide judgment dated 09.01.2014.

It is not in dispute that the suit property forms part of Khasra No.46/17/2(4-14). In the judgment of the learned First Appellate Court a reference has been made to an order dated 26.11.2013, passed by this Court in Civil Writ Petition No.14594 of 2011 Municipal Corporation, Faridabad vs. State of Haryana and others wherein it has been held that land comprised in Khasra No.46/17/2(4-14) is reserved for manure pit for the villagers and is covered under exception to clause 2(g)(5)(ii) of Punjab Village

Common Lands (Regulation) Act, 1961 and, as such, does not belong to Municipal Corporation, Faridabad. Learned counsel for the appellant has very fairly conceded that order dated 26.11.2013 was challenged by way of Letters Patent Appeal but the Letters Patent Bench has dismissed the appeal and no further challenge to the order of Letters Patent Bench has been made on behalf of the appellants.

In view of the above, order dated 26.11.2013 has attained finality and as a natural consequence it comes out that Municipal Corporation, Faridabad is not owner of land comprised in Khasra No.46/17/4(4-14), including the land in dispute herein, and that being so, notice issued under Section 408-A of the Act, is without jurisdiction. Therefore, the contention that Civil Court has no jurisdiction to entertain the matter is wholly untenable and is hereby rejected.

As regards respondent's plea learned First Appellate Court has recorded a very definite finding to the effect that as per case of respondent-plaintiff, his ancestors have been the residents and proprietors of village Unchagaon and have been owners in possession of agricultural land. In order to prove this fact, the respondent has relied upon Exhibit P5 wherein names of various proprietors of the village including that of his grand father Mohar Singh, are mentioned. The respondent-plaintiff has also proved on record

jamabandi of village Unchagaon for the year 1954-55 (Exhibit P8), 1960-61 (Exhibit P10), 1965-66 (Exhibit P11), 1970-71 (Exhibit P12), 1975-76 (Exhibit P13), 1980-81 (Exhibit P14), 1985-86 (Exhibit P15), 1990-91 (Exhibit P16), 1995-96 (Exhibit P19) and 2000-2001 (Exhibit P21) wherein suit land bearing part of Khasra No.46/17/2 (4-14) is shown to be “Gadha Khad” (manure pits). Nothing to the contrary has been shown on behalf of the appellants.

In view of the above, coupled with the fact that the appeal is not shown to involve any question of law, much less a substantial one, I do not find any jurisdiction to interfere with the well reasoned judgment/decreed recorded by the learned First Appellate Court.

Dismissed.

No costs.

February 19, 2015
m. sharma

(Mahavir S. Chauhan)
Judge