

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

RSA No.5803 of 2014 (O&M)

Date of Decision: 03.08.2015

Subhash Chander and another

.....Appellants

Versus

Municipal Committee, Charkhi Dadri, Bhiwani

.....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present:- Mr. Akshay Kumar Goel, Advocate,
for appellants.

SHEKHER DHAWAN, J

Present Regular Second Appeal is against concurrent findings of both the Courts below whereby suit filed by plaintiffs-appellants for prohibitory injunction was dismissed by Court of first instance and appeal dismissed by First Appellate Court.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

3. Relevant facts for the purpose of decision of appeal that plaintiffs-appellants filed suit for prohibitory injunction on the grounds that they had purchased the suit land and got sanctioned separate site plan.

Construction of house was raised in the year 1957. However, defendant-

Municipal Committee issued notices under Section 181 Haryana Municipal

Act 1973 and another notice under Section 208 and 209 but the same are illegal, unlawful and void.

4. Defendant took the plea that plaintiff produced wrong site plan and in fact plaintiffs raised illegal construction and encroached upon the land in public street bearing Khasra No.1166 for which a notice dated 22.03.2006 was served upon them. Defendant is well within his right to remove the illegal construction and encroachment from public place. Thereafter notices under Section 181, 208 and 209 Haryana Municipal Act 1973 were issued but the same have not been complied with. So the appeal may be dismissed.

5. Court of first instance appreciated the material and evidence available on file and returned the findings that plaintiffs have not been able to establish their entitlement over land measuring 148 Sq. Yds. In Exhibit P-4 they have taken the stand that plaintiffs are owners in possession of land measuring 151 Sq. Yards whereas the house is on area measuring 148 Sq. Yards. The correct dimension of house have not been given in Exhibit P-1. The onus was lawfully upon the plaintiffs but plaintiff failed to prove the same and as such suit of plaintiffs was dismissed. Plaintiffs challenged the said findings before Court of first appeal and First Appellate Court also returned the same finding that as per plaintiffs-appellants they had purchased two biswa land vide sale deed Exhibit P-1 dated 14.03.1957. As per the sale deed no dimensions of the property was given and in absence of that it cannot be held that plaintiffs are raising construction on their share qua property. First Appellate Court also confirmed the findings recorded by Court of first instance.

6. Learned counsel for appellants took the plea that site plan in

this case was got sanctioned from Municipal committee in the year 1957.

The construction was raised long back but thereafter notices were issued illegally because if at all any notice to be issued as per provisions of Municipal Act, the same could be issued within six months but that has not been done in the present case. The Courts below have completely ignored this fact while returning the findings so judgments of both the Courts below be set aside and appeal be accepted.

7. Having considered the submissions made by learned counsel for both the parties this Court is of the considered view that both the Courts below have recorded the concurrent findings that plaintiffs have failed to prove that construction was raised by the plaintiffs on a land purchased by them. For that purpose plaintiffs were required to establish that the construction was raised on the same property which was allegedly purchased by them. If no dimension was detailed in the sale deed, injunction cannot be sought merely by filing a site plan.

8. Regarding issuance of notice within six months, First Appellate Court had rightly observed that notices under Section 181, 208 and 209 of Haryana Municipal Act, 1973 Exhibits P-5 and P-6 were issued to the plaintiffs by the Committee when they started raising construction on the public land. In the reply Exhibit D-5 it had come that re-construction was going on. So the plea raised by learned counsel for appellants that notices were not issued in legal manner is devoid of any merit.

9. The said concurrent findings of fact do not involve any substantial question of law calling for interference by this Court by way of present Regular Second Appeal. Such a law was laid down by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwai (dead) by**

LRs., 2001(3) SCC 179 that if concurrent findings were recorded by both the Courts below and there being no substantial question of law involved in the case, Regular Second Appeal is not maintainable as per provisions of Section 100 of Code of Civil Procedure.

10. In view of the above present Regular Second Appeal being without any merits stand dismissed.

(SHEKHER DHAWAN)
JUDGE

August 03, 2015
msd