

In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.5848 of 2014 (O&M)

.....

Date of decision:7.5.2015

Karan Kadian

.....Appellant

v.

Chief Administrator, HUDA and others

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ramesh Hooda, Advocate for the appellant.

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Inderjit Singh, J.

This regular second appeal has been filed by Karan Kadian-appellant/plaintiff against Chief Administrator, HUDA and the Estate Officer, HUDA-respondents/defendants and Haryana State-proforma respondent-defendant challenging the impugned judgment and decree dated 14.10.2014 passed by the learned District Judge, Jhajjar, vide which the appeal filed by Chief Administrator, HUDA and another against Karan Kadian against the judgment and decree dated 31.3.2012 passed by the learned Civil Judge (Junior Division), Bahadurgarh, decreeing the suit of plaintiff-Karan Kadian has been allowed.

The brief facts of the case are that Karan Kadian-plaintiff filed suit against Haryana State, Chief Administrator, HUDA and the Estate Officer, HUDA, Bahadurgarh for permanent injunction. It is mainly stated

in the plaint that shop/booth site No.105-P measuring 5.50 x 8.25 metres = 45.375 sq. metres in Sector 6, Urban Estate, HUDA, Bahadurgarh, was allotted by the Estate Officer, HUDA to Hoshiar Singh-father of the plaintiff vide allotment letter No.1423 dated 28.2.1997 for tentative sale consideration of ₹6,90,000/-. At the request of the father of the plaintiff, the above shop/booth site was re-allotted in favour of the plaintiff vide re-allotment letter No.383 dated 22.1.1999 and Conveyance Deed No.50 was also executed on 31.3.2006 in favour of the plaintiff by the Estate Officer, HUDA, Bahadurgarh. The plaintiff constructed a shop over the site. It is stated that the defendants want to demolish the shop of the plaintiff forcibly and illegally.

On notice, the defendants filed written statement taking preliminary objection that the plaintiff has not come to the Court with clean hands as the material facts regarding construction over the area of verandah/public corridor, that too in violation of the provisions of HUDA Act, have been conceded and, therefore, the suit deserves dismissal. It is also stated that the plaintiff has the legal right to construct the shop over the booth site/plot as per the approved drawing issued vide memo No.3299 dated 16.2.1999 by the answering defendants. The construction made by the plaintiff over the booth site/plot is illegal and is not according to the by-laws/rules of HUDA. As per approved drawing, a side verandah/public corridor/passage was to be constructed by the allottee for the use of public at large, but while constructing the booth site/plot, the plaintiff covered the side verandah/public passage of 2.75 x 8.75 Metres and, in this way, the

plaintiff made unauthorized construction and the said act of the plaintiff is illegal.

Both the parties produced evidence. The learned Civil Judge (Junior Division), Bahadurgarh, vide judgment and decree dated 31.3.2012 decreed the suit of the plaintiff for permanent injunction restraining the defendants from demolishing the suit shop forcibly and illegally.

Aggrieved against the judgment and decree passed by the learned Civil Judge (Junior Division), the Chief Administrator HUDA and Estate Officer, HUDA filed appeal against Karan Kadian-plaintiff as well as Haryana State. The learned District Judge, Jhajjar vide judgment and decree dated 14.10.2014 accepted the appeal and the suit of the plaintiff was dismissed. Aggrieved against this judgment and decree passed by the learned District Judge, Jhajjar, the present regular second appeal has been filed. Lower Courts record has been requisitioned, which has been received.

At the time of arguments, learned counsel for the appellant argued that the appellant is owner of the site of the booth measuring about 45.375 Sq. Metres and he has every right to make construction over the total area. He also argued that in the case of other plot owners as per Exs.P.5, P.6, P.7 and P.8, they have constructed the same. The booths have been constructed on the total area purchased by them.

I have heard learned counsel for the appellant and have gone through the record.

After hearing learned counsel for the appellant and after going through the record, I find that the relief of permanent injunction is a

discretionary relief. In the present case, the plaintiff has not come to the Court with clean hands. He has not filed any site plan showing his construction over the property in dispute. The plaintiff-appellant has also not brought on record the approved site plan. The approved site plan otherwise is also on the record, which is produced by the respondents and has been marked.

At the time of arguments, it is admitted that the construction raised on the spot is not as per approved site plan. In the approved site plan, verandah has been shown. Therefore, the construction raised by the plaintiff is not as per approved site plan and, therefore, is unauthorized and illegal. Secondly, it is admitted at the time of arguments by the learned counsel for the appellant that no notice has been issued yet by the respondents for demolishing the construction and, in this way, the suit of the plaintiff is also premature. The learned District Judge, Jhajjar, in the judgment dated 14.10.2014 has discussed the evidence in right perspective. The appellant/plaintiff has not disclosed in the plaint that he had not made the construction as per the approved site plan and has suppressed the material facts. Further more, the case of construction by the other owners of the booth sites is not in dispute in the present case. Even if, it is presumed that they have committed wrong, the plaintiff cannot be allowed to commit the wrong on that ground. The judgment and decree passed by the learned District Judge, Jhajjar, is correct and as per law after appreciating the evidence in right perspective and do not require any interference from this Court and the same are upheld. Otherwise also, no question of law, much

less any substantial question of law arises in the present regular second appeal.

Finding no merit in the present regular second appeal, the same is dismissed.

May 7, 2015.

(Inderjit Singh)
Judge

hsp