IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.5803 of 2016
Date of decision:07.09.2016

Dr. Shri Bhagwan ... Petitioner

Vs.

Basanti Devi and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sandeep K. Sharma, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner is aggrieved of the impugned order dated 18.05.2016 (Annexure P-5), passed by the Lower Appellate Court in Civil Miscellaneous Appeal No.42 of 2015 against the order dated 24.08.2015, whereby, an application moved under Order 39 Rules 1 and 2 of Code of Civil Procedure (hereinafter referred to as “CPC”) in a suit for permanent injunction at the instance of the respondents, has been allowed and the petitioner-defendants have been restrained from interfering into peaceful possession of the respondent-plaintiff over the suit property.

Mr. Sandeep K. Sharma, learned counsel appearing on behalf of the petitioner-defendant submits that the trial Court allowed the application after examining the record of Municipal Corporation, i.e., assessment register and found that property was subjected to tax and the same was recorded in their record. However, during the course of hearing before the Lower Appellate Court, order dated 24.09.2014 (Annexure P-6) of

Commissioner, Municipal Corporation, Rohtak was produced on record being the subsequent fact to contend that the concerned Tax Superintendent, who without receiving any cogent proof, had entered unit No.104-A in between unit nos.104 and 105 in the Assessment Register of the Municipal Corporation and but there was no adjudication of the same in the findings.

I am in agreement with the aforementioned submission of Mr. Sharma. For the sake of brevity, paragraph 5 of the order dated 18.05.2016 reads thus:-

> "Learned counsel for the appellant has argued that learned Lower Court has wrongly passed the impugned order dated 24.08.2015. It has been submitted that appellant is the owner in possession of the suit property plot no.105 and there is no plot no.104-A on the spot and the entry in Municipal Corporation Register has wrongly been shown for committing such irregularity and illegality for that Jaswant Singh Tax Assistant was suspended after giving notice by the Deputy Commissioner. It has been further submitted that there is only one plot bearing no.104 and due to irregularity the plot no.104A was deleted from the Corporation record, therefore, prima facie plaintiff have no case for which the stay order should have been passed in his favour but learned Lower Court has granted the stay in favour of the respondent-plaintiff and the against the appellant-defendant which is liable to be set aside. Rather the appellant has prima facie case and irreparable

loss are caused to the appellant. The assessment register of Municipal Committee is not a valid proof of title, therefore, present appeal may kindly be allowed by setting aside the order dated 24.08.2015."

The aforesaid point was discussed while giving finding but there was no passing reference to the same. At least, the Court ought to have pondered upon either by accepting or declining the same but not in the manner and mode as has been adopted.

For the aforementioned reasons, I deem it appropriate to set aside the impugned order by remitting back the matter to the Lower Appellate Court to decide the miscellaneous appeal afresh after taking into consideration the aforesaid facts after affording opportunity to the parties.

I refrain myself from issuing notice of motion to the other side/respondents to defray the costs, much less, prolongation of litigation as there is already interim stay in their favour.

Accordingly, the impugned order is set aside and the revision petition stands allowed.

The parties through their counsel are directed to appear before the Lower Appellate Court on 03.10.2016.

(AMIT RAWAL)
JUDGE

September 07, 2016
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No