

CR No.6096 of 2016(O&M)
Date of Decision: 04.10.2016

Versus

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Deepak Balyan Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner-Municipal Council has challenged the order dated 01.08.2016 passed by Additional Civil Judge (Senior Division), Bahadurgarh vide which application under Order 6 Rule 17 CPC for amendment of written statement filed by defendant No.2-petitioner was dismissed.

[2]. Plaintiff-respondent filed a suit for permanent injunction against State of Haryana and another on the ground that plaintiff had purchased the plot vide sale deed dated 10.01.1974 having defined dimensions.

[3]. After the purchase of said plot, the plaintiff applied for sanctioning the site plan from Municipal Committee,

Bahadurgarh and the same was sanctioned on 19.05.1976. Thereafter, plaintiff raised boundary wall and constructed residential house over the plot in question and since then, the same was in his possession.

[4]. In para No.6 of the plaint, plaintiff alleged in the following manner:-

“That the defendant No.2 threatened the plaintiff by show cause notice No.343/5E dated 4.4.2011 to demolish the portion of the house of the plaintiff, which is marked by letters ABCD and shown in red colour in the site plan, alleging that the plaintiff has encroached upon the portion of West Jua Drain and is bent upon to dispossess the plaintiff therefrom forcibly and illegally. Whereas the plaintiff has not encroached upon a single inch of West Jua Drain. It is pertinent to mention here that the father of the plaintiff has got demarcated the suit property through revenue official and there was no encroachment of any type was found over the land of West Jua Drain as is evident from the LC report submitted by the revenue official in a civil suit No.69 of 2003 decided on 17.02.2006. It is further submitted that inadvertently the said report could not be produced before the predecessor of this Hon'ble Court and the above mentioned suit was decided in the absence of said

demarcation report. The report is attached herewith for the kind perusal of the Hon'ble Court."

[5]. On receiving notice from original defendant No.2 i.e. Sub Divisional Officer (Irrigation) Haryana Government PWD Mechanical Union Reg. No.41, Irrigation Branch, Bahadurgarh, Nahra-Nahri Road, near Drain Bahadurgarh, Distt. Jhajjar, the civil suit came to be filed.

[6]. Written statement was filed by the original defendant in which para No.6 of the written statement on merits reads as under:-

"Para is wrong and denied. The plaintiff has been asked to demolish the illegal possession of Govt. land. Rest of para is denied for want of knowledge"

[7]. Thereafter, the area came under the municipal limits and original defendant No.2 was replaced by Municipal Council, Bahadurgarh. Municipal Council, Bahadurgarh filed an application under Order 6 Rule 17 CPC for amendment of written statement. Defendant No.2-Municipal Council, Bahadurgarh sought to add para No.5 in the preliminary objections of the written statement. The proposed amendment reads like this:-

"5. That the suit of plaintiff is barred by principle of res judicata. It is submitted that

Ragnunath, the father of present plaintiff had filed a civil suit bearing No.69 dated 28.03.2003 against Sub Divisional Officer, Water Services Sub Division Bahadurgarh and also against state of Haryana in respect of alleged house constructed on the plot measuring 325 sq. yards situated at Nahra-Nahri Road, Bahadurgarh, Distt. Jhajjar. The above said suit was dismissed on merit by the Court of Sh. D.N. Bhardwaj, HCS, Addl. Civil Judge, Sr. Div., Bahadurgarh on 17.02.2006. The plaintiff being the daughter of Raghunath again filed the present suit in respect of same property which is barred by principle of res judicata. It is further submitted that the present plaintiff being daughter of Raghunath S/o Jug Lal is litigating in the present suit/subsequent suit. Municipal Council Bahadurgarh, as defendant No.2 in the present suit is litigating in place of the Sub Divisional Officer (Irrigation) Haryana Government P.W.D Mechanical Union Reg. No.41 Irrigation Branch Bahadurgarh, Distt. Jhajjar.”

[8]. Perusal of aforesaid facts reveal that factum of earlier suit was pleaded by the plaintiff himself in the plaint to which original written statement was to the effect that the fact pleaded in the plaint was denied. Plaintiff was asked to demolish the illegal construction over the Government land and rest of the

para was denied for want of knowledge.

[9]. In view of aforesaid, the proposed amendment cannot be held to be necessary for just decision of the case on merits. The case has already reached the stage of final arguments. Parties would be at liberty to argue the case on merits in view of pleadings and evidence on record.

[10]. Consequently, this revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

04.10.2016
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Whether reportable

Yes/No

Yes/No