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

**Date of decision : 06.04.2016
RSA-3030-1986**

1.

Municipal Corporation, Amritsar

... Appellant

Versus

Mohinder Kaur

... Respondent

2.

RSA-3085-1986

Municipal Corporation, Amritsar

... Appellant

Versus

Piara Singh (deceased through LRs)

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harsh Chopra, Advocate for
Mr. T.S. Gujral, Advocate
for the appellant.

Mr. M.S. Kang, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing **RSA**

No.3030 of 1986 titled as **“Municipal Corporation, Amritsar V/s Mohinder**

Kaur” and *RSA No.3085 of 1986* titled as *“Municipal Corporation, Amritsar V/s Piara Singh (deceased through LRs)”*.

The appellant(s)-defendant(s) is aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby they have been injuncted from not interfering in the peaceful possession.

Mr. Harsh Chopra, Advocate for Mr. T.S. Gujral, learned counsel appearing on behalf of the appellant(s)-defendant(s) submits that the trial Court dismissed the suit for perpetual injunction on the ground that respondent-plaintiff failed to seek any possession as it has been proved on record that the Municipal Corporation declared the site as un-built area, owing to promulgation on the Town Planing Scheme bearing No.22 under Section 192 of the Punjab Municipal Act, 1911 (hereinafter called 'the 1911 Act'). However, the lower Appellate Court reversed the finding of the trial Court by holding that the scheme was not promulgated as per the strict provisions of Section 192 of the 1911 Act. Once, it has been proved on record that the possession is with the Municipal Corporation, simpliciter suit for permanent injunction could not have been filed, much less, maintainable. Even the amendment sought with regard to the property being evacuee ,would be meaningless and urges this Court to formulate the following substantial question of law arises for determination.

1. Whether in the absence of declaration of possession, simpliciter suit was/is maintainable or not?

Mr. M.S. Kang, learned counsel appearing on behalf of the respondent-plaintiff submits that though, the trial Court rendered a finding viz-

a-viz the injunction and qua ownership against respondent-plaintiff by holding that it was a evacuee property. As per the conveyance deed, the erstwhile owner was allotted land measuring 3 kanals 12 marlas. A resolution with regard to declaring the Town Planning Scheme was passed in the year 1943, whereas sanctioned in the year 1961. No explanation of delay has come-forth, much less, has not been notified or published in the newspaper and thus, the scheme, if any, was not valid in the eyes of law and prays for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force in the submission of Mr. Harsh Chopra, for the reason that no doubt, the defendant has brought on record the documents Ex.D1 and D-6, a resolution and sanction of the year 1961, but it has not been proved on record whether there had been compliance of provisions of Section 192 of the 1911 Act as extracted by the lower Appellate Court, or notice of the scheme was ever published by promulgation in two newspapers. The copies of the newspaper-cuttings have not seen the light of the day, much less, have not been placed on record. The procedure prescribed under the aforementioned provisions of the prevailing Act, has not been complied with. On the contrary, the appellant-defendant has only been restrained from interfering with the peaceful possession. There is another aspect of the matter as witness of the Municipal Corporation unequivocally admitted, that respondent-defendant is in possession of property and therefore, there was no need to seek the possession or declaration and possession.

Keeping in view the aforementioned facts and circumstances, I do

not find any illegality and perversity in the judgment and decree of the lower Appellate Court. The substantial questions of law as noticed above are answered against the appellant-defendant and in favour of the respondent-plaintiff.

The appeals stand dismissed.

06.04.2016
yogesh

**(AMIT RAWAL)
JUDGE**