

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

(1)

**Regular Second Appeal No.2318 of 1987 (O&M)
Date of Decision: March 30, 2016.**

Inder Singh(deceased) through LRs and others

.....APPELLANT(s).

VERSUS

Bhiwani Municipality, Bhiwani

.....RESPONDENT.

(2)

Regular Second Appeal No.2751 of 1987 (O&M)

Municipal Committee, Bhiwani

.....APPELLANT.

VERSUS

Inder Singh (deceased) through LRs and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Naresh Kumar, Advocate with
Mr. Keshav Partap Singh, Advocate
for the appellants in RSA-2318-1987 and
for respondents in RSA-2751-1987.

Mr. Sachin Gupta, Advocate
for the respondent in RSA-2318-1987 and
for appellant in RSA-2751-1987.

SURINDER GUPTA, J.

This judgment will dispose of two appeals captioned above as
the same arise from a common judgment passed by Additional District

Judge, Bhiwani.

Brief Facts:-

2. Inder Singh and other sons of Anji Singh filed suit seeking the relief of permanent injunction to restrain the defendant Municipal Committee (now Municipal Council), Bhiwani from interfering in the ownership and possession of the plaintiffs over the land ABCDE shown with red colour in the site plan (Ex.PW5) and from dispossessing them from this property.

3. The plaintiffs averred that they are resident of *Thola Aashian* and have constructed their house and shop over the *shamlat* land which came to their share. Boundary wall around the property marked with ABCDE in the site plan (Ex.PW5) was raised 40-50 years back and the plaintiffs after constructing the shop and house started living here. Earlier, father of plaintiffs was in possession of the property and after his death, plaintiffs are in possession of the same. Municipal Committee, Bhiwani had been recovering house tax and water tax of the disputed property from the plaintiffs.

4. About this *shamlat* land, a suit was filed by Bishambar Dayal against Municipal Committee, Bhiwani bearing Civil Suit No.18 of 1979 decided on 04.12.1979 and the entire land which was got mutated in favour of Municipal Committee during emergency in its name, was again mutated vide mutation No.2195 dated 28.09.1981 as *shamlat Thola*. In order to harass the plaintiffs, defendant Committee was out to demolish the construction over the property in dispute without having any right and have initiated the proceedings in this regard. Apprehending danger to their possession and title over suit property, plaintiffs filed the instant suit.

5. Municipal Committee, Bhiwani contested the claim of the plaintiffs in the written statement, inter-alia, pleading that the suit is bad for non-joinder of necessary parties as the plaintiffs have not impleaded Haryana State as party because at the relevant time, Municipal Committee was superseded and was directly controlled by the Haryana State. It was further averred that the disputed site is *Gair Mumkin Johri* and *Rafa-e-aam* bearing killa No.947. The plaintiffs have deliberately withheld this information to defraud the Court. Plaintiffs have no concern with land bearing khasra No.947. A notice dated 08.11.1982 under Section 181(2) of Haryana Municipal Act, was given to the plaintiffs, who raised construction of a boundary wall overnight before filing the suit. The suit land being *Gair Mumkin Johri*(pond), *Rafa-e-aam*(place for use by all) being used by the general public for years, the defendant has every right to get the land under possession of plaintiff, released and demolish the unauthorised construction. About the civil suit No.18 of 1979, it was averred that the mutation was changed from the name of Municipal Committee but the plaintiffs were not party to that suit which pertains only to land is bearing khasra No.943 measuring 20 kanals 12 marlas, while the suit land bearing khasra No.947 measuring 8 kanals 8 marlas still being used as *Rafa-e-aam* by the general public. As per *Wazib-ul-arz*, Hadbast No.21, Mauja Bhiwani, this land was left for use by general public and cattle under the ownership of Municipal Committee. All the other averments by the plaintiffs were contested, controverted and denied.

6. Plaintiffs re-asserted their case in the replication and contested and controverted the averments in the written statement. About notice dated

18.11.1982 to the plaintiffs by the Municipal Committee, it was averred that Municipal Committee has no right to give notice.

7. Pleadings of the parties led to the framing of issues as follows:-
- (1) Whether the plaintiffs are in possession of suit land as co-sharer? OPP
 - (2) Whether the suit is bad for non-joinder of necessary parties as alleged? OPD
 - (3) Whether the suit is not maintainable without notice under Section 52 of Haryana Municipal Act, 1973 and 80 CPC? OPD
 - (4) Whether the plaintiff has concealed material facts? If so to what effect? OPD
 - (5) Whether the suit is false and frivolous and the defendants are entitled to special costs? If so how much? OPD
 - (6) Relief.
8. Learned Sub Judge 1st Class, Bhiwani decreed the suit and restrained Bhiwani Municipality, Bhiwani from interfering in the possession or demolishing the construction raised by the plaintiffs in the disputed land except in due course of law.
9. Plaintiffs filed appeal against the judgment and decree of learned Sub Judge 1st Class, Bhiwani and defendant Municipal Committee, Bhiwani also filed a separate appeal. Both the appeals were clubbed and decided by common judgment passed by learned Additional District Judge, Bhiwani, whereby both the appeals were partly allowed and the judgment of learned lower Court was modified to the extent that Municipal Committee, Bhiwani was restrained from interfering with the possession of plaintiffs over the land measuring 487 square yards forming part of khasra No.947 as shown in site plan (Ex.DW3/A) and the suit of the plaintiffs was dismissed

regarding the remaining area of the suit land.

10. I have heard learned counsel for the parties and perused record of the Courts below with their assistance.

11. In the later part of this judgment, the parties, for the sake of convenience, will be referred as plaintiffs and defendant as per the civil suit.

12. Learned counsel for the plaintiffs has argued that the suit property which comprises of rooms and shops of plaintiffs shown as ABCDE in the site plan (Ex.PW5) are admittedly in possession of plaintiffs. Plaintiffs are cosharers in the land of *Thola Aashian* as per jamabandi for the year 1981-82 (Ex.P7). As such, the suit land came to their share and they are residing there since long. Both the Courts have discarded this plea of the plaintiffs despite evidence on record that construction of plaintiffs at the spot was 40/50 years old. While referring to report dated 28.11.2014 (Annexure A-1), obtained by the plaintiffs from Tehsildar, Bhiwani, which was sought to be produced on record vide CM No.12969-C of 2015, it was argued that father of plaintiffs was having share of 2 kanals 9 marlas in *shamlat panna Aashian*, Bhiwani and the plaintiffs and other co-owners have raised construction over 2 kanals 9 marlas of land in khasra No.947 min at the spot. Learned counsel for the plaintiffs has further argued that the suit land, which is part of khasra No.947, falls within the share of plaintiffs as they are proprietors of *Thola Aashian* and the Municipal Committee has no right, title or concern with it. Learned Sub Judge 1st Class, Bhiwani though allowed decree of injunction in favour of appellants-plaintiffs, but it was conditional to the extent that Municipal Committee was allowed to proceed against the

plaintiffs in due course of law and the first Appellate Court has confined the

plaintiffs' claim only with regard to the land measuring 487 square yards despite the fact that the entire land shown with letters ABCDE in the site plan (Ex.PW5) is in possession of plaintiffs.

13. Learned counsel for the defendant has argued that the suit land is public property and vests in Municipal Committee, Bhiwani. As per recital in *Wazib-ul-arz*, Hadbast No.21, Mauja Bhiwani, for the year (sic), the land of khasra No.947 and other khasra numbers were reserved for *Johar*, for the cattle to drink water with the specific stipulation that no individual can demolish these Johars or stop the supply of water to these *Johars*(ponds). The land was put under the management of Municipal Committee, Bhiwani. There is no document to support the averments of plaintiffs that the suit land had fallen to their share in any partition. They have not even mentioned khasra number of the suit land in the plaint and have tried to defraud the Court by concealing this material fact. The defendant proceeded to take action against the plaintiffs in due course of law but the plaintiffs filed this suit and sought the relief of injunction. As the Municipal Committee was proceeding in accordance with law, no relief of injunction could be allowed to the plaintiffs. The first Appellate Court got misguided with one line statement of official of defendant about the age of construction raised by the plaintiffs at the spot and debarred the defendants from taking any action over the land measuring 487 square yards without any rhyme or reason. The witness, who has stated about the age of the construction, had stated so only without assessing the age of construction on his own and he was also not an expert in this regard. The plaintiffs are not entitled to any relief of injunction

as claimed in this suit.

14. The plaintiffs have filed the present suit seeking the relief of permanent injunction to restrain defendant from interfering in their possession over the suit land shown as ABCDE in the site plan (Ex.PW5). First substantial question of law which arises for consideration in this case is ***'as to whether the plaintiffs have properly described the suit property and if not, to what effect?'***

15. The plaintiffs have not mentioned the suit property with any khasra number. This appears to be deliberate and not without any reason. While not describing the suit land by khasra number, they have made reference to another civil suit alleging that suit land was retransferred from the ownership of Municipal Committee, Bhiwani to the ownership of proprietors of *Thola Aashian*. As per order VII Rule 3 of the Code of Civil Procedure, 1908 “where the subject matter of the suit is immovable property, the plaint shall contain description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in the record of settlement or survey, the plaint shall specify such boundaries or numbers.”

16. Though khasra number of the suit land was not mentioned in the plaint and when the defendant took the objection that the suit land comprised of khasra No.947, which has been concealed by the plaintiffs to defraud the Court, the plaintiffs reasserted their plea in replication that the suit land does not bear any khasra number and it is not the land reserved for *Johari* or *Rafa-e-aam*. Learned Sub Judge recorded categorical finding that the suit land comprised of khasra No.947. The plaintiffs are not refuting this fact at

this stage, rather, have conceded that the suit land is part of khasra No.947.

They have tried to support this plea by seeking to place on record Annexure A-1, a report dated 28.11.2014 by Tehsildar showing that they are in possession of 2 kanals 9 marlas of land with others, out of khasra No.947. This report, though connect suit land bearing khasra No.947, but otherwise in no manner, is either relevant or material for decision of the case, as such, the misc. application bearing No.CM-12969-C-2015 is declined.

17. Now, the question arises for consideration is as to why the plaintiffs have concealed this fact that suit land is part of land bearing khasra No.947 while filing the plaint and refuted the plea taken by defendant in the written stated to this extent in the replication.

18. The purpose, apparently, was to conceal the material facts to defraud the Court as in the event of their mentioning the suit land with khasra No.947, they were not in a position to plead and prove that they have any title and possession over suit land or that their possession is authorised and can be protected under law as land of khasra No.947 as per *Wazib-ul-arz*, was reserved for *Johar* and for cattle to drink water and was placed under management of Municipal Committee, Bhiwani. The above substantial question of law, as such, is answered against the plaintiffs to the effect that they have not properly described the suit land and deliberately with mala fide intention withheld the description of the suit land in order to defraud the Court despite having knowledge that the suit land comprised of khasra No.947.

19. Second substantial question of law which calls for determination in this appeal is '*as to whether despite being in possession of the suit property,*

the plaintiffs are entitled to the discretionary and equitable relief of injunction?'

20. In view of my observation while deciding first substantial question of law, the plaintiffs, who have not come to the Court with clean hands and have concealed the material facts, are not entitled to any discretionary and equitable relief of injunction in this case.

21. The second reason for declining the relief to the plaintiffs is that learned Sub Judge, while referring to the terms of *Wazib-ul-arz*, pertaining to land bearing khasra No.947, has observed in para 11 of the judgment as follows:-

“Now the only dispute remains as to what control the municipality has over the disputed land. Counsel for the defendant drew my attention to the *wazib-ul-arz* of Bhiwani Jonepal, where the disputed land is situated. Photostat copy of *wazib-ul-arz* is *Ex.D3/A*. As per condition of the pond, land comprised in khasra no.947 is *gair mumkin johri* as revealed by Jamabandi *Ex.D4*. There is also a mention in the *wazib-ul-arz* that the suit land comprised in khasra no.947 measuring 8 kanals 8 marlas was left for the pond alongwith some other land. Counsel for the defendant contended that since the disputed land forming part of khasra no.947 was left for the common purposes of residents of Bhiwani Jonepal and this is a part of pond it cannot be encroached upon by the plaintiffs and since the management of ponds was left to the municipality as mentioned in *wazib-ul-arz* the municipality is within its rights to stop and restrain the plaintiffs from raising any construction in the disputed land or encroaching upon any portion of pond. This argument of the defendant's counsel appears to be weighty because *wazib-ul-arz* is a part of record-of-rights (in section 31(b) of Punjab Land Revenue Act) and all entries

in it are presumed to be correct unless rebutted. Reference may be made to “AIR 1930 Lahore page 159”. (Note: Citation is *Sher Singh Vs. Thakar Singh AIR 1930 Lahore 150*). At the time of settlement when the *wazib-ul-arz* is prepared, land for the common purposes is left with the consent of proprietors of *samlat* land. In the present case, though the plaintiffs being the co-sharers in *Ashiayan Pana* have a right of ownership in the land comprised in khasra no.947 alongwith other proprietors but since the management of this comprising the pond was left to the management of municipal committee, the latter can restrain the plaintiffs from making any encroachment on any portion of pond.”

22. The plaintiffs have taken a plea in the plaint referring to civil suit No.18 of 1979 to support their contention that the *shamlat* land was retransferred to *shamlat Thola* vide judgment passed in that case and mutation No.2195 was sanctioned in this regard on 28.09.1981.

23. Perusal of the judgment (Ex.D5) passed in civil suit No.18 of 1979 shows that the plaintiffs were not party to that suit which pertains to the land bearing khasra No.943 measuring 20 kanals 12 marlas and the suit land was not subject matter of that suit. Plaintiffs of that suit were declared owners in possession of the suit land and the Municipal Committee, Bhiwani was held as having no right or concern with the same and the relief of permanent injunction was also allowed restraining Municipal Committee from interfering in their possession. Much stress has been given on the fact that on the basis of that judgment, a mutation was sanctioned transferring the entire *shamlat* land from the name of Municipal Committee, Bhiwani to *shamlat Thola*. Firstly, copy of that mutation order has not been placed on

file in support of his contention. Secondly, plaintiffs placed on record copy of *Parat Patwar* of mutation No.2923, wherein reference is made to one mutation No.2195 regarding change of ownership. This copy of *Parat Patwar* is not per se admissible in evidence and nowhere reflect that land bearing khasra No.947 was transferred in the name of *shamlat Thola*. A fact which can be proved by documentary evidence, cannot be inferred from the plea taken by either party. The plaintiffs have not produced on record jamabandi of the land bearing khasra No.947. Evidently, there was reason for them to withhold the jamabandi of this land as they have not come up with a plea that suit land is part of khasra No.947. It was at later stage that they have conceded this fact. The defendants produced jamabandi of land bearing khasra No.947(8-8). The entry in the jamabandi for the year 1971-72 (Ex.D4) shows that this land is recorded as ownership of *Jumla Malkan Wa Digar Haqdaran Bhumi Hasab Rasad Raqba Hardo Halqajat*. In column No.5, the suit land is described as *Maqbooja Rafa-e-aam* and in column No.8 it is mentioned as *Gair Mumkin Johri*. The plea of the plaintiffs when examined from any angle and evidence on record, do not prove their title over the suit land. There is no evidence produced on record as to when plaintiffs have taken possession of the suit land.

24. Learned Sub Judge 1st Class, Bhiwani has made certain observations that the plaintiffs are proprietors of *Thola Aashian* and co-owners of *shamlat* land including the suit land but this fact is not made out from the documentary evidence on record. There is no copy of jamabandi on the record showing the suit land as belonging to proprietors of *Thola*

175/21 and 22 in cultivating possession of Municipal Committee, Bhiwani and the plaintiffs have been shown as having share in *shamlat land* and State of Haryana is recorded in column No.4 as owner in possession of above land. The fact to be taken care at this stage is that the onus was heavily on the plaintiff to prove their case but they have not lead any cogent and convincing evidence to make out that suit land mentioned as ABCDE in the site plan (Ex.PW5) came to their share or share of their father in any partition and they have become owner of the same. Under the terms of *Wazib-ul-arz*, suit land is under the management of Municipal Committee. The plaintiffs cannot claim any exclusive right over this land to the exclusion of general public and divesting the Municipal Committee from its management.

25. It is not disputed that the Municipal Committee had proceeded against the plaintiffs in accordance with provisions of law by serving a notice dated 08.11.1982 under Haryana Municipal Act. This dispels the plea of plaintiffs that the defendants are forcibly interfering in their possession when apparently they are proceeding in accordance with the provision of law. This disentitles the plaintiffs from claiming the relief of injunction. This Court in case of ***Mohan Lal Vs. Mohan Singh, 1996(1) Civil Court Cases 30 (P&H)***, has observed that the Courts are the guardian of public property and a encroacher of public property is not entitled to the discretionary relief of injunction. Discussing the parameters for grant of relief of injunction, it was observed in para 5 of the above judgment as follows:-

“5. Apart from the three ordinary ingredients which must be satisfied for grant of injunction in favour of

a plaintiff/petitioner, namely, a strong prima facie case, balance of convenience and irreparable injury, in cases involving public properties and public interest, the Courts have to bear in mind as to whether the grant of injunction would be conducive or detrimental to public interest. The Courts have to take note of the fact that Government lands belonging to the public at large and the community as a whole is entitled to enjoy the properties belonging to the Government. In fact, the Government holds property as a trustee of the people and, therefore, where any attempt is made by an individual or a group of individuals to misappropriate/misuse or otherwise interfere with the enjoyment of public property by the people in general, the Courts have to be extremely cautious in granting injunction in favour of such person only on the ground that he is in possession of the property. Possession of public property by such an individual or a group of individuals is no possession in the eyes of law. Such a person cannot claim any right whatsoever on the basis of unlawful occupation of the public property and Courts would be justified in declining any assistance to such a person. In such like cases, a plaintiff cannot claim parity with a person who has a dispute with another individual over a private property. Moreover, the Courts have to act as guardian of the public property and should not pass an order of injunction in favour of a person who has made unauthorised encroachment of the public property.”

26. Before proceeding further, it will be relevant to analyse observations of first Appellate Court, whereby Municipal Committee was barred from interfering in the possession of plaintiffs over the land measuring 487 square yards forming part of land bearing khasra No.947. As

already discussed, plaintiffs have not sought any relief regarding land bearing khasra No.947, as such, said relief cannot be granted to them. While allowing this relief, the first Appellate Court has relied on the statement of DW1 Rajinder Singh, Building Inspector, who had stated that '*old rooms and shops are about 40-50 years old*'. Firstly, this witness is not an expert to assess the age of the construction at the spot; secondly, he has not examined the construction to ascertain its age and thirdly, his mere statement could not be a basis to conclude that construction was perhaps raised in the year 1925 to 1935 so as to draw the inference that the part of the construction was prior to the settlement of terms of *Wazib-ul-arz*(Ex.D3). All these observations of learned first Appellate Court are based on presumption and surmises without any substantial evidence in this regard. DW1 Rajinder Singh, Building Inspector has nowhere stated that the construction was of which category and what was the basis of his saying that it was about 50-60 years old. PW5 Udhal Singh has admitted that plaintiffs raised the boundary wall about 4 years before his statement (recorded on 11.06.1985) i.e. at the time when the plaintiffs submitted the site plan (Ex.D2) seeking permission from the Municipal Committee in the year 1981, to raise construction, which was declined. This suit was filed in the year 1982. The statement of this witness (PW5) shows that plaintiffs in order to establish their possession over the suit land, had raised boundary wall at that time. The statement of PW3 Jaina Singh that the owners of *shamlat* land in *Aashian Tholas* had partitioned the land, is not supported by any evidence on record.

27. Somewhat similar matter also came before the Hon'ble Apex

Court in *Jagpal Singh and others Vs. State of Punjab and others 2011(11)*

SCC 396. Subject matter of that suit was also community land. Expressing its grief over the attempt being made by unscrupulous elements to grab common land in villages, it was observed in para 5 of the judgment as follows:-

“5. What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous persons using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with its original character, for personal aggrandizement at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs.”

28. The Hon'ble Apex Court had observed that the trespasser who illegally encroached upon the Gram Panchayat land by using muscle power, money power and in collusion with State officials and even Gram Panchayat, are not entitled to any relief and the Courts have not to condone, such type of blatant illegalities. In that case, appellants had raised construction of house over the common land and they were ordered to remove their construction and vacate the same. While appreciating the efforts of our ancestors, who reserved some land for ponds and other public purposes, the Apex Court observed in para 17 to 19 as follows:-

“17. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bath in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.

18. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.

19. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these mal-practices must stop.”

29. While disposing of that appeal, Hon'ble Apex Court gave direction to all the States to prepare a scheme for eviction of the illegal and unauthorized occupants of the land of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land.

30. In case of **Jai Singh and others vs. State of Haryana, 2003 (2) PLR 659**, Full Bench of this Court while dealing with concept of land reserved for common purposes as per provisions of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, observed in para 62 as follows:-

“62. In view of the discussion made above, we hold that:-

- i) Sub-section (6) of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 and the explanation appended thereto, is only an elucidation of the existing provisions of the said Act read with provisions contained in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948;
- ii) the un-amended provisions of the Act of 1961 and, in particular, Section 2(g)(1) read with Sections 18 and 23-A of the Act of 1948 and Rule 16(ii) of the Rules of 1949 cover all such lands which have been specifically earmarked in a consolidation scheme prepared under Section 14 read with Rules 5 and 7 and confirmed under Section 20, which has been implemented under the provisions of Section 24 and no other lands;
- iii) the lands which have been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under Section 14 read with Rules 5 and 7 and entered in the column of ownership as *Jumla Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat* and in the column of possession with the proprietors, shall not vest with the Gram Panchayat or the State Government, as the case may be, on the dint of Sub-section (6) of Section 2(g) and the explanation appended thereto or any other provisions of the Act of 1961 or the Act of 1948;

- iv) all such lands, which have been, as per the consolidation scheme, reserved for common purposes, whether utilised or not, shall vest with the State Government or the Gram Panchayat, as the case may be, even though in the column of ownership the entries may be *Jumla Mustarka Malkans Wa Digar Haqdarani Hasab Rasad Arazi Khewat* etc.”

31. Applying the ratio of judgment of above referred cases to the instant case, it is evident that the land in dispute is reserved for common purposes and continued to be so and it vests in the defendant.

32. In view of my above discussion, it is apparent that plaintiffs, who have not come to the Court with clean hands, are not entitled to the discretionary and equitable relief of injunction as prayed for. Learned Sub Judge 1st Class despite recording findings that the suit land as per *Wazib-ul-arz*, is under the management of Municipal Committee and was reserved for *Gair Mumkin Johri*, allowed the relief of injunction to the plaintiffs and the Municipal Committee was restrained from proceeding against the plaintiffs except in due course of law, ignoring the fact that Municipal Committee had already proceeded against the plaintiffs in due course of law. Learned first Appellate Court committed grave error of law and fact by allowing the relief of injunction to the plaintiffs for 487 square yards of land, despite the fact that plaintiffs have not been able to set up their right, title or claim with regard to land of khasra No.947. Relief allowed to the plaintiffs was also beyond pleadings. The second substantial question of law is also decided against the plaintiffs.

33. As a sequel of my discussion above, the appeal filed by defendant Municipal Committee, Bhiwani (RSA-2751-1987) is allowed and appeal filed by Inder Singh and others (RSA-2318-1987) is dismissed. The judgment and decree passed by the Courts below are set aside and the suit of plaintiffs is ordered to be dismissed with costs throughout.

March 30, 2016.

Sachin M.

**(SURINDER GUPTA)
JUDGE**

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Whether to be referred to reporters: Yes/No