

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 1300 of 1989

Date of decision: 11.2.2016

Municipal Corporation, Jalandhar

.....Appellant

Versus

Balbir Raj Sondhi (dead) through LRs.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.K.Goyal, Advocate,
for the appellant.

Mr.Kabir Sarin, 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?*

Raj Mohan Singh, J.

1. Defendant- Municipal Corporation, Jalandhar is in regular second appeal against the judgment and decree dated 10.1.1989 passed by Additional District Judge, Jalandhar, whereby appeal against judgment and decree dated 24.10.1986 passed by Sub Judge, Ist Class, Jalandhar was accepted and suit of the plaintiff was decreed.

2. Plaintiff Balbir Raj Sondhi filed a suit for perpetual injunction restraining the defendant-Municipal Corporation, Jalandhar from interfering in his peaceful possession and allowing him to make construction over the suit property

measuring 19 marlas, depicted by words 'ABCD' with dimensions in the plaint after declaring the plaintiff to be owner in possession of the same.

3. Plaintiff alleged that he is exclusive owner in possession of 19 marlas of land as shown in the plaint. He applied for sanction of site plan to the Municipal Corporation on 15.11.1984 for construction on the suit property, but the same was illegally rejected by the defendant on 30.11.1984. The said order is claimed to be illegal and without jurisdiction and against provisions of law. Plaintiff further alleged that the defendant has no connection with the suit land and the same is not part of municipal land nor it vests in the defendant. The act of the defendant in treating the disputed plot as park gave cause of action to the plaintiff to file the suit.

4. Defendant contested the suit on all counts. Dismissal of the suit was prayed on the ground of issuance of no notice as stipulated under Section 396 of the Punjab Municipal Corporation Act. Defendant asserted that the plaintiff has no locus standi to file the suit and the suit is bad for non joinder of necessary parties. Other objections were also taken. Defendant further alleged that the plaintiff is not the owner of the property in question as it is a public park and has been shown as such in the town planning scheme of the Municipal Corporation. Public at large is using the property in question. Defendant did not give

sanction to the plaintiff to raise construction over the property in question which was a public park.

5. After filing replication, parties went on trial on the following issues:-

“1. Whether the plaintiff is in possession of the property in dispute ? OPP

2. Whether the plaintiff is in possession of the property in dispute ? OPP

3. Whether the suit is liable to be dismissed on account of non service of notice by the plaintiff upon the defendant under Section 396 of the Punjab Municipal Corporation Act ? OPD

4. Whether the suit is bad for non-joinder of necessary parties ? OPD

5. Whether the plaint is not properly verified, if so, its effect ? OPD

6. Relief.”

6. Parties led their respective evidence in support of their case on the aforesaid issues.

7. Trial Court held issue No.1 against the plaintiff, thereby holding that the plaintiff is neither owner nor in possession of the property in question. Issue No.2 was doubly recorded as it was issue No.1 only. Issue No.3 was decided in favour of the plaintiff. Under issue No.4, trial Court held the suit

to be bad for non joinder of necessary parties. Issue No.5 was not pressed by the defendant and ultimately suit of the plaintiff was dismissed vide judgment and decree dated 24.10.1986 passed by the Sub Judge, Ist Class, Jalandhar.

8. Feeling aggrieved against the judgment and decree of the trial Court, plaintiff went in appeal. Lower Appellate Court accepted the appeal and decreed the suit of the plaintiff vide judgment and decree dated 10.1.1989.

9. During the pendency of appeal, respondent Balbir Raj Sondhi died on 9.3.1993 and his legal representatives were brought on record.

10. In the present appeal no substantial question of law has been framed. Framing of question of law was not necessary in the light of decision rendered by Full Bench of this Court in **'Ganpat versus Smt. Ram Devi and Ors. 1977 PLR Page-1'**, wherein it was held that the provisions of Section 41 of the Punjab Courts Act, are in no way effected and curtailed by the amendment made in Section 100 of CPC. Now, since the regular second appeal is maintainable only with the aid of section 100 CPC, therefore, substantial questions of law is *sine qua non* for maintaining the appeal.

11. Prior to amendment of Section 100 CPC, a second appeal could have been filed before this Court on the grounds set out in clauses (a) to (c) of Section 100 (1) CPC i.e. (a) the

decision being contrary to law or to some usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law and (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

12. Now the interference in the second appeal could only be made if substantial question of law arises in the case. Therefore, the interference cannot be only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim '*interest reipublicae ut sit finis litium*'. The underlined purpose was to bring finality to the issues/litigation at some point of time.

13. I have heard learned counsel for the parties and have perused the record.

14. Evidently, as per jamabandi Ex.P-2, plaintiff is proved to be a co-sharer of 165 shares out of land measuring 8 kanal 5 marlas comprised in khasra No. 11322. Municipal Corporation could not prove any cogent evidence to show that the land in question was ever acquired or declared by the Corporation as public street or validly carved out as a public park. The stand

taken by the defendant in the written statement was that the land in dispute was a park as earmarked in the town planning scheme and public at large has a right of ingress and egress over the suit land, which is a street. The stand vis-a-vis public park and street could not be justified by the defendant by any evidence on record. The town planning scheme has not been proved on record. The plan, which has been placed on record, is also not proved to have been signed by the competent authority. Only this plan, alleged to have been brought on record, was virtually discarded by the witnesses of the defendant when it was admitted by them that it was never signed by the competent authority. Similarly, notice under Section 242 of the Municipal Corporation Act has not been produced on record. The claim as advanced that no objections were filed against the notice has to be rejected summarily inasmuch as that the final decision after the alleged issuance of notice and objective hearing of objections, if any, was not produced or exhibited on record.

15. DW-1 Harbinder Singh, draftsman, Municipal Corporation, Jalandhar, while appearing in the witness box, stated that he has brought the town planning scheme relating to Laxmipura Area No.6, Tanda Road, Jalandhar, wherein site in question has been shown to be a park. Photocopy of the scheme was brought on record as Ex.D-1 and the site in

question was marked by words 'ABCD' in the said document.

The witness, in his cross-examination, has admitted that he was posted as draftsman for the last four years. He visited the site in dispute in September, 1985. Photocopy of the scheme was not prepared by the witness, nor it was prepared in his presence, nor the scheme was signed by any of the employees of the Municipal Corporation.

16. Parshotam Lal, draftsman, Municipal Corporation, Jalandhar, was also examined as DW-2, who has stated that the site is a public chowk and it was declared as public street by following the procedure under Section 242 of the Punjab Municipal Corporation Act. It was finalised by the Commissioner, Municipal Corporation. Public notices were issued, but no objections were filed and it was declared to be public street. Final notice was given and was finalised and order was sent to the concerned department. The witness has admitted that notice dated 7.12.1983 was issued for declaring the site to be public street. Before 7.12.1983 no action was taken by the Municipal Corporation except a plan Ex.D-2 which was prepared on 30.5.1983. Notice has not been brought on record. The witness has also admitted that Sadiq Ram, Patwari of the Corporation had checked the record, which was in his possession. The record in possession was prepared by him from the revenue record of the State Government. It was

prepared in the presence of the witness. The witness could not tell as to when the record was prepared and whose name was recorded therein as owner of the site in question. The witness never talked to the said patwari, nor patwari has been examined in the instant case. On a pointed question, whether the site in question was ever acquired by the corporation, the witness pleaded ignorance and stated that he did not know as to whether site in question was ever acquired or not. He also pleaded ignorance with regard to acquisition proceedings ever initiated by the Corporation or not. The area of the property and dimensions were not known to the witness. The witness also pleaded ignorance with regard to ownership of the plaintiff in the locality. He could not tell the khasra number of the property in dispute. The scheme in the municipal area is normally prepared by the office of Divisional Town Planner. The witness pleaded ignorance about the scheme ever prepared by the Town Planner or implemented thereafter. The plan was traced out by one Pushpa Devi but it was not done in the presence of the witness.

17. DW-2 also pleaded ignorance with regard to the survey done by the surveyor. The record of surveyor, tracer, draftsman and others, as mentioned in Ex.D-2, were never seen by the witness. The witness with reference to Ex.D-2 stated that at point 'X', word 'park' is written, whereas, he could not tell the area of the park as shown in Ex. D-2. The area shown in red

line is shown as chowk, but the witness could not tell the area of that also. If the statement of this witness is read in totality, the same does not advance the case of the defendant in any manner. The witness has candidly admitted that in Ex.D-2, only chowk is mentioned and not the public street. The witness has also admitted that being the employee of the municipal corporation, he has deposed in favour of the corporation.

18. Similarly, the statement of Piara Singh, while appearing as DW-3, does not advance the case of the defendant inasmuch as that the witness did not know as to whether the sale deed recited the fact that the plot is part of the park. He could not tell the length and breadth of the park, nor he could specify the point from where park started and ended. Witness was not a qualified engineer. He could not tell the date, month and year in which it was carved out. The witness never made any application for inspection of the site to the office of Town Planner. No part of park was sold to him.

19. The sale deed in favour of DW-3 Piara Singh, which was executed by the plaintiff, has nothing to do with the description of the property in question. As shown earlier the sale deed does not mention about the park on any side of the land purchased by Piara Singh. The photocopy of the plan attached to the sale deed has not been brought on record as exhibited document. It shows 10' wide passage on the eastern

side of the plot sold, thereafter, the land is described as park. The evidence of such type cannot infer existence of any public park having validly carved out in town planning scheme. If the statement of DW-1 Harbinder Singh, DW-2 Parshotam Lal and DW-3 Piara Singh are read in conjunction with each other, the only irresistible conclusion that could be arrived at is that the defendant has miserably failed to establish its case with reference to existence of park. The defendant has failed to prove that any scheme has been validly enforced for earmarking and carving out any park or the same was ever declared to be public street with the aid of provisions of Punjab Municipal Corporation Act. Since the witnesses have not established the factum of preparation of any scheme for the area by the office of Divisional Town Planner, therefore, the plaintiff cannot be deprived of his property without due course of law.

20. The findings recorded by the trial Court with regard to non joinder of all the co-sharers cannot be appreciated in view of the fact that in a suit for injunction, plaintiff can ask for injunction against a co-sharer from whom his right is threatened. Even one of the co-sharer can seek injunction in recognition of his right and as well as on behalf of other co-sharers against a third party. Presence of all the co-sharers is not necessary for adjudication of such controversy vis-a-vis third party. In view of aforesaid, it can safely be held that the plaintiff's possession as

owner cannot be interfered with except in due course of law. Non sanctioning of site plan by the Corporation cannot be treated to have created cloud over the title of the plaintiff. No substantial question of law has been formulated by the appellant. In considered opinion of this Court, no substantial question of law even arises for consideration of this Court at the instance of the defendant against whom restraint has been ordered. The plaintiff can only be dis-possessed in due course of law at the instance of defendant-Municipal Corporation.

21. In view of aforesaid, I find no ambiguity in the judgment and decree passed by the lower Appellate Court. Therefore, this appeal is totally bereft of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

February 11, 2016
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