

504

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

RSA-2389-1991

Date of decision : 18.05.2016

Madan Lal Malhotra (deceased through LRs)

... Appellant

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rao Ajender Singh, Advocate
for the appellant.

Mr. A.K. Yadav, Addl. A.G., Haryana.

Mr. Sachin Mittal, Advocate
for LRs of respondent No.5.

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)

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby, the claim for mandatory injunction seeking direction to the defendant(s) to remove the construction over the property, in dispute, bearing No.MEP 1359 and hand over the possession on the ground being purchased in open auction on 14.04.1967 and issuance the sale certificate dated 13.05.1996 (Ex.P-1), in this regard, was issued, has been dismissed.

Learned counsel for the appellant-plaintiff submits that the defendant Nos.1 to 3 handed over the possession, it is, in these circumstances, the suit was filed. The private defendants contested the suit on the ground that

they have purchased the plot bearing No.1358 and they have no concern with regard to the plot bearing No.1359, whereas, defendant Nos 1 to 3 did not file written statement and suffer a statement on 16.07.1984 that they were not contesting the suit. The Courts below have dismissed the suit on the ground that the appellant-plaintiff has not been able to identify the property and as well as on the ground that the suit was barred by law of limitation and it was filed in the year 1981. He further submits that all these factors have not been noticed by both the Courts below. The factum of claiming relief viz-a-viz the handing over the possession of the plot bearing No.MEP 1359, had not been considered, thus, there is a illegality and perversity, much less, the claim as per the provisions of Section 39 of the Specific Relief Act, 1963 (hereinafter called 'the 1963 Act') was for mandatory injunction as the defendants were enjoined upon to discharge the obligation and therefore, the suit cannot be held to be barred by law of limitation, thus, urges this Court to formulate the following substantial questions of law:-

1. Whether the suit for mandatory injunction as per the Section 39 of the 1963 Act, can be thrown out being barred by law of limitation?
2. Whether the defendant Nos.1 to 3 were enjoined upon the obligation in handing over the possession of the plot allotted vide sale certificate dated 13.05.1996 (Ex.P-1), free from encumbrance and encroachment.
3. Whether the judgment and decree of the Courts below suffers from illegality and perversity.

Mr. Sachin Mittal, learned counsel appearing on behalf of the private defendants-respondent(s) submits that after having purchased, they are owner in possession of the plot bearing No.1358 and therefore, they have unnecessarily been impleaded the party and moreover, the plaint did not disclose any relief against his clients.

Mr. Anil Kumar Yadav, Addl. A.G., Haryana submits that no doubt the statement was suffered for not filing the written statement, but the fact remains that it was incumbent upon the appellant-plaintiff to prove the identity of the property and in the absence of the same, both the Courts below did not grant the relief as sought.

Learned State Counsel, in rebuttal, submits that the Court can always mould the relief by issuing an appropriate direction to defendant Nos.1 to 3 as the Department of the Rehabilitation, had issued the sale certificate in pursuance to the auction.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the finding rendered by both the Courts below regarding the suit being barred of law of limitation is neither here and there. Mandatory injunction is sought by invoking the provisions of Section 39 of the 1963 Act.

For the sake of brevity, the Section 39 of the 1963 Act reads thus:-

“39. Mandatory injunctions.— When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.”

It was incumbent upon the defendant Nos.1 to 3 to discharge the obligation in handing over the vacant possession of the plot free from encumbrance and encroachment, having failed to do so, the plaintiff had no other option but, to knock the door of the Court. The defendant(s) have not chosen to contest the suit, much less, did not file the written statement. Be that as it may, in case, the Court had, on the basis of the appreciation of the evidence, formed an opinion that the plot was not in existence, it could have issued an appropriate direction to defendant No.1 to 2 to allot alternate plot instead of declining the relief in the manner and mode as noticed in the judgment and decree, under challenge. The party, who had purchased the property in open auction and paid the entire payment in the year 1967, cannot left in lurch, much less, remediless.

For the foregoing reasons, the judgment and decree of the both the Courts below are hereby set aside and the direction is issued against defendant Nos.1 to 3 to hand over the possession of the plot bearing No.MEP 1359, free from encumbrance and encroachment. In case, the plot is not identified or not available, a further direction is issued to allot alternate plot of equal size. The suit stands dismissed qua defendant Nos.4 to 6 as essentially, the claim of the appellant-plaintiff was/is only against defendant Nos.1 to 3.

The aforementioned exercise should be done within a period of 3 months from the receipt of the certified copy of this order.

With the aforesaid observations, the appeal stands allowed.

18.05.2016
yogesh

(AMIT RAWAL)
JUDGE