In the High Court of Punjab and Haryana at Chandigarh

R.S.A. No. 1593 of 2009
Date of Decision: January 12, 2016

Municipal Council, Jind and others

... Appellants

Versus

Haryana Roller Floor Mills (Pvt) Ltd. and another

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

1) Whether Reporters of the local papers may be allowed to see the judgments?

2) To be referred to the Reporters or not?

3) Whether the judgment should be reported in the Digest?

Present: Mr. Gunjan Rishi, Advocate,
for the appellants.

Mr. Suman Jain and Mr. Manmohan Singh, Advocates,
for the respondents.

Paramjeet Singh Dhaliwal, J.

This regular second appeal has been preferred by the appellants-defendants against the judgment and decree dated 12.11.2007 passed by learned Additional Civil Judge (Senior Division), Jind whereby suit filed by the respondents/plaintiffs for permanent injunction has been decreed, as well as, against the judgment and decree dated 25.10.2008 passed by learned District Judge, Jind, whereby appeal preferred by the appellants/defendants has been dismissed.

For convenience sake, hereinafter parties will be referred to as they are arrayed in the Court of first instance.

The detailed facts are already recapitulated in the judgments of the Courts below and are not required to be reproduced. However, brief facts relevant for disposal of this second appeal are that plaintiffs filed a suit for permanent injunction against the defendants on the ground that building of plaintiff no.1 situated at Old Hansi Road, Jind was assessed for house tax for the years 2001 to 2004 and different bills were issued by the defendants in this regard. The plaintiffs had paid the amount of house tax for the years 2001 to 2004 against receipts issued by the defendants. When the plaintiffs went to the office of defendants in order to pay the house tax for the year 2004-05 to the tune of Rs.1645/-, the defendants refused to accept the said amount and again issued bills of house tax for the years 2001-02 to 2004-05. The plaintiffs had also made representation dated 13.12.2004 to the defendants to withdraw the said bills, but the defendants were taking coercive methods to effect the illegal recovery of alleged bills. Hence, suit was filed.

Upon notice, defendants appeared and filed their joint written statement taking preliminary objections regarding maintainability; cause of action; locus standi etc. On merits, it is averred that as per existing construction at the spot, the house tax comes out to be Rs.47,044/- per year, whereas the plaintiffs have deposited the amount of Rs.1645/- per year for the years 2001-02 to 2003-04, on the basis of wrong assessment. The plaintiffs in connivance with the contractor caused a great financial loss to the defendants. The defendants are well within their rights to recover the said amount from the plaintiffs.

On the pleadings of the parties, the Court of first instance framed the following issues:-

"1. Whether plaintiffs are entitled to a decree for permanent injunction restraining the defendants from recharging and

making double recovery of house tax qua property no. 2169/31 for the years 2001-02, 2002-03, 2003-04 and 2004-05? OPP

2. *Whether plaintiffs do not have any cause of action? OPD*
3. *Whether civil court has no jurisdiction to entertain and try the present suit? OPD*
4. *Whether suit is bad for issuance of statutory notice under Haryana Municipal Act? 1973? OPD*
5. *Whether suit being based on false and frivolous facts even to the knowledge of plaintiffs deserves to be dismissed with special costs? OPD*
6. *Relief.”*

The Court of first instance, after perusal of the evidence led by the parties, decreed the suit vide judgment and decree dated 12.11.2007. Against that, defendants preferred an appeal, which has been dismissed by the lower appellate Court vide judgment and decree dated 25.10.2008. Hence, this second appeal.

I have heard learned counsel for the parties.

Learned counsel for the appellants has submitted that the following substantial questions of law formulated in para no. 5 of grounds of appeal, arise for consideration in this second appeal:-

“*a) Whether the ld. Courts below rightly appreciated the evidence produced on record?*

b) Whether the ld. Courts below has rightly appreciated the provisions of Section 99 and 101 of the Haryana Municipal Act?

c) Whether the Civil Courts has jurisdiction to adjudicate upon the issues which has been clearly barred by the provisions of Haryana Municipal Act?

Learned counsel for the appellants contended that the findings recorded by both the Courts below are against law, without appreciation of facts and not sustainable in the eyes of law. Therefore, the impugned judgments and decrees are liable to be set aside.

On the other hand, learned counsel for the respondents contended that both the Courts below have rightly decreed the suit.

I have considered the contentions raised by learned counsel for the parties and perused the record.

There is categorical finding recorded by the Court of first instance that property of the plaintiff had already been assessed for house tax for the years 2001-02 to 2004-05 and payment had already been made at the rate of Rs.1645/- per year. Payment for the year 2004-05 was also offered vide letter dated 01.12.2004 by the plaintiffs, but the same was refused by the defendants. No notice was served upon the plaintiffs before making fresh levy of house tax @ Rs.40613/-. It has been recorded that there is no material to show as to for what reasons the defendants exercised second assessment of house tax for the property in question of the plaintiffs. The principles of natural justice have been flouted and it was mandatory for the defendants to issue notice to the plaintiffs before imposition of the revised tax particularly when the plaintiffs had admittedly deposited the house tax already assessed for the years 2001 to 2004 @ Rs.1645/- As per the provisions of Section 52 of the Haryana Municipal Act, 1963, the suit cannot be held to be barred without serving of any notice because this section has no applicability qua the suit instituted under Section 38 of the Specific Relief Act.

Concurrent findings of fact have been recorded by both the Courts below. Learned counsel for the appellants could not show that the said findings are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, said findings of fact do not warrant interference in second appeal. No question of law, much-less substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed.

January 12, 2016 **[Paramjeet Singh Dhaliwal]**
vkd **Judge**