

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

RSA No.2621 of 2010 (O&M)

Date of decision : 23.05.2016

Rishi Raj Sharma and others

...Appellants

Versus

Rajiv Dang and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Ms. Amrita Nagpal, Advocate for the appellants.

Mr. Sanjay Vij, Advocate for respondent Nos.1 to 3.

Mr. C.S. Singh, Advocate for
Mr. G.S. Hooda, Advocate for respondent No.4.

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the dismissal of the suit and appeal filed against, thereon, seeking declaration and permanent injunction with regard to the dispute as described in the site plan.

Ms. Amrita Nagpal, learned counsel appearing on behalf of appellants submits that suit aforementioned had been instituted on the premise that in the revenue record i.e. mutation, the defendants have been shown to be owner of land measuring 375 square yards and thus there was encroachment of 67 square yards. The then Municipal Committee initiated the proceedings for

alleged violation but the same have been set aside by way civil court decree dated 15.10.1997. The plaintiff being resident of aforementioned land and being effected, invoked the jurisdiction of the Civil Court. Affixation of the notice itself proves the residential portion. There was no need to get demarcation or any other legal indulgence. The area was brought under the T.P. Scheme and in view of the aforementioned fact, the defendant cannot be prevented to deviate from the sanctioned scheme and ought to have honoured the sanctity and thus urges this Court for formulation of substantial questions of law as culled out in memorandum of appeal.

Mr. Sanjay Vij, learned counsel appearing on behalf of respondent Nos.1 to 3 and Mr. C.S. Singh, Advocate for Mr. G.S. Hooda, Advocate for respondent No.4 submits that contesting defendant had purchased the land vide registered sale deed dated 25.05.1975 of an area measuring 442 square yard. No evidence has come on record to show how the mutation was of lesser area. In fact the plaintiff has failed to discharge the onus. After purchase of the land, site plan was submitted for sanction which was granted on 21.11.1972 and the construction thereon had been raised in 1973. However, in 1994, Municipal Committee had issued notice qua alleged encroachment, which was assailed in the competent court of law and same has been set aside. It is settled law that in case previous scheme is not implemented for a period of five years, it is deemed to have abandoned and in support of his contention, relies upon ratio decidendi culled out by Hon'ble Division Bench of this Court in *Municipal Committee, Thanesar Vs. Indian Oil Corporation, 1998(2) PLJ 119* and thus urges this Court for affirmation of the findings rendered by both the Courts below.

I have heard learned counsel for the parties and appraised the

paper book and of the view that plaintiff has failed to prove the averments in the plaint. Direct and cogent evidence is conspicuously wanting/lacking. Sale deed is registered document which carries presumption, whereas mutation does not confer any title. The factum of non-implementation of the previous scheme has been admitted by the witness of the Municipal Council. The plaintiff has failed to prove the locus standi in seeking declaration.

It is settled law that person who has no locus standi cannot initiate the process of the Court without instituting the suit under provision of Order 1 Rule 8. These factors have been taken into consideration by both the Courts below.

As per ratio decidendi culled out by judgment cited (Supra), it is conceded position on record that the previous scheme was not implemented and therefore plaintiff cannot take the benefit of the same.

I do not intend to differ with the findings rendered by both the Courts below.

No ground for interference is made out, much less, no substantial questions of law arises for determination.

Dismissed.

23.05.2016

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**(AMIT RAWAL)
JUDGE**