

204

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 19.08.2016

1.

RSA-8-2012 (O&M)

Gurnam Singh

... Appellant

Versus

Chief Administrator, HUDA and others

... Respondents

2.

RSA-2654-2012 (O&M)

Gurnam Singh

... Appellant

Versus

Gandhi Karyakarta Sahakari Awas Samiti and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjay Verma, Advocate
for the appellant (in both the appeals).

Mr. Deepak Balyan, Advocate
for respondent Nos.1 to 5 in RSA-8-2012 and
for respondent Nos.2 to 6 in RSA-2654-2012.

Mr. Sanjay Jain, Advocate
for respondent No.6 (in RSA-8-2012) and
for respondent No.1 (in RSA-2654-2012).

Mr. Anil Kumar Malik, Advocate
for respondent No.7 (in both the appeals).

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)

This order of mine shall dispose of two appeals bearing **RSA No.8 of 2012** titled as **“Gurnam Singh V/s Chief Administrator, HUDA and others”** and **RSA No.2654 of 2012** titled as **“Gurnam Singh V/s Gandhi Karyakarta Sahakari Awas Samiti and others”**.

The appellant-plaintiff is aggrieved of the judgment and decree of the lower Appellate Court, whereby the claim in the suit seeking declaration and setting aside of the notices dated 02.07.2004 and 21.07.2004 for removing the construction/demolition has been declined, in essence, the judgment and decree of the trial Court has been set aside.

Mr. Sanjay Verma, learned counsel appearing on behalf of the appellant-plaintiff submits that the suit aforementioned was filed on the premise that the land underneath, the construction had been released by HUDA vide release order dated 09.04.1987 and therefore, instead of choosing the alternative remedy under Section 20 of the Haryana Urban Development Authority, 1977 Act (hereinafter called 'the 1977 Act'), the suit has been filed as the action of the HUDA was without jurisdiction. He submits that the lower Appellate Court ought not to have dismissed the suit in view of the existence of the alternative remedy as it is a settled law that where the action of the HUDA or any other authority is without jurisdiction, jurisdiction of Civil Court under Section 9 of the Code of Civil Procedure can be invoked.

He further submits that the he had purchased the land vide sale deed dated 31.05.1999 from Rameshwar Lal Saini, Attorney holder of Shri

Hari Kishan, the President of Gandhi Karyakrata Sahakari Awas Samiti and GPA is dated 31.08.1998. The lower Appellate Court has discarded the sale deed on the premise that its photocopy has been proved on record.

He further submits that as per the pre-pleading of the party, the issue of admissibility in evidence was never pressed and raised, therefore, the admissibility of the sale deed was not the question to be pondered upon. Issuance of notice itself proves the possession of the appellant-plaintiff and the consequential relief of injunction had been sought to protect the forcible interference and dispossession. At least, the lower Appellate Court ought to have granted the injunction. , thus, urges this Court for formulation of the substantial questions of law as drawn in the memorandum of appeal.

He further submits that in view of the the Five-Bench judgment of Hon'ble Supreme Court while interpreting the provisions of Section 97 of CPC, it has been held that the ratio decidendi culled out in **“Pankajakshi (D) through LRs and others V/s Chandrika and others” 2016 (2) RCR (Civil) 245**, is no longer ground and therefore, the appeal can be treated to have been filed under Section 41 of the Punjab Courts Act, 1963 and therefore, there is no necessity of framing the substantial questions of law and all these questions of fact and evidence can be looked into.

Mr. Sanjay Jain, Mr. Deepak Balyan & Mr. Anil Kumar Malik, learned counsel appearing on behalf of the respondent(s)-defendant(s) submits that as per the provisions of Section 20 of the 1977 Act, the remedy, if any, was to file the appeal within 30 days. The suit *ex facie* was not maintainable as the Civil Court did not have any jurisdiction as per the

provisions of Section 50 of the 1977 Act. Even otherwise, the appellant-plaintiff had not been able to establish his ownership. The photocopy of the sale deed (Ex.P-1) was seriously objected to, thus, the appellant-plaintiff has miserably failed to rebut the aforementioned objection.

Mr. Sanjay Jain submits that the Society had been dissolved long time back and any President of the aforementioned Society could not have given GPA as the Society always run through resolution, thus, urges this Court that findings of lower Appellate Court cannot be interfered until and unless there is a gross illegality and perversity and prays for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that *prima facie* relief sought in the suit is only for declaration of the notices to be illegal, null and void and no relief of possession had been sought. The notices aforementioned pertained to removing of the construction and demolition, but the fact remains that HUDA vide order dated 09.04.1987 had released the land, in my view, the action of the HUDA was without jurisdiction as HUDA did not have any ownership, therefore, mere exhibition without proving the document i.e. sale deed pales into insignificance. The Society had a chance to challenge the sale deed by setting aside the order. No steps have been taken as the suit was filed in the year 2004 and the sale deed is 31.05.1999. If at all, the Society had any grievance, they could have followed the procedure as indicated above.

It is matter of record that the GPA is a registered document. In

my view, all these factors have not been noticed by lower Appellate Court, thus, there is a illegality and perversity in the judgment and decree rendered by the lower Appellate Court.

For the foregoing reasons, the judgment and decree of the lower Appellate Court is hereby set aside and that of trial Court is restored. The suit of the appellant-plaintiff is decreed. Declaration is granted and the notices dated 02.07.2004 and 21.07.2004 are also hereby set aside. The respondent(s)-defendant(s) are restrained from causing forcible interference and dispossession in peaceful possession of the property except in due course of law.

Decree sheet be prepared.

With the aforesaid observations, the appeals stand allowed.

19.08.2016
yogesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

✓
Yes/ No

Whether Reportable

✓
Yes/ No