

RSA No.862-2012

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

RSA No.862-2012 (O & M)

Date of Decision: 26.02.2016

Municipal Council, Kartarpur

... Appellant (s)

Versus

Rita Bharadwaj

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the 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 ?

Present: Mr.Anil Kumar Sharma, Advocate with
Mr.Daman Dhir, Advocate,
for the appellant.

Mr.Amit Jhanji, Advocate,
for the respondent.

Paramjeet Singh Dhaliwal, J.

CM-2318-C-2012

Allowed as prayed for.

CM-2319-C-2012

Allowed, as prayed for. For the reasons mentioned in the application, delay of 223 days in re-filing the instant appeal is condoned.

RSA No.862-2012 (O &M)

This regular second appeal of the defendant is directed

RSA No.862-2012

against the judgment and decree dated 30.04.2009 passed by learned Additional Civil Judge (Sr. Divn), Jalandhar whereby suit for declaration and permanent injunction filed by the respondent-plaintiff has been decreed and against the judgment and decree dated 20.01.2011 passed by learned Additional District Judge, Jalandhar whereby appeal filed by the appellant-defendant has been dismissed.

For convenience sake, hereinafter, reference to parties is being made as per their status in the plaint.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiff filed a suit for declaration to the effect that the order dated 18.01.2001, report of S.O. dated 19.12.2000, approved by the Executive Officer of buildings for not getting the plan sanctioned in respect of the property situated at Ramgarh Road, Kartarpur, comprised in khasra Nos.1004, 1009, 1010 and 1008, measuring 9 kanals 16 marlas, as detailed in the head-note of the plaint, owned by the plaintiff and all the proceedings conducted by the Municipal Council in ordering composition fee, are illegal, unlawful, arbitrary and not binding on the right of the plaintiff and the defendant is not entitled to recover the same as the property does not fall within the municipal limits and the defendant is liable to return the cheque No.080878 drawn on the Jalandhar Central Cooperative Bank Ltd., Kartarpur, obtained from the

RSA No.862-2012

plaintiff by fraud, coercion, misrepresentation and also suit for permanent injunction restraining the defendant, its employees and representatives from recovering the above said amount from the plaintiff. It was the case of the plaintiff that she is owner in possession of the property measuring 9 kanals 16 marlas, situated at Ramgarh Road, Kartarpur, bearing khasra numbers mentioned above. She purchased this property from Shri Kartar Singh son of Ram Singh, vide registered sale deed dated 16.03.1994. After purchase of the property, she constructed a banquet hall/kitty hall over some part of the land and remaining part of the land is vacant. Since the property purchased by the plaintiff does not fall within the municipal limits of Kartarpur, the building plans were not got approved from the defendant. After purchase, some construction was raised in the year 1994 and some portion was again constructed in the year 2000. The defendant threatened to demolish the construction alleging that the construction was raised without sanction of the site plan from the defendant. The defendant also threatened to demolish the building forcibly. The plaintiff spent huge amount on construction. The plaintiff under pressure agreed to submit the building plan for approval subject to the condition that the Municipal Committee proves that the khasra numbers purchased by the plaintiff falls within the municipal limits, Kartarpur. The defendant insisted for a blank cheque as security. The defendant assured the plaintiff that the cheque would be filled in after consulting the plaintiff, which would be for the charges calculated

RSA No.862-2012

for approval of building plan. The cheque in dispute was issued by the plaintiff. The plaintiff filed an application with the building plan on 29.12.2000 and the defendant failed to prove that the area falls within the Municipal limits of Kartarpur. No information was sent by the defendant. On 09.01.2001, the plaintiff moved an application to the District Town Planner, Jalandhar, asking whether the area purchased by her falls within the municipal limits of Kartarpur. The District Town Planner informed the plaintiff vide letter dated 19.01.2001 that the said area did not fall within the Municipal area of Kartarpur. No objection was raised to this report by the defendant. Therefore, the plaintiff is not liable to get the site plan sanctioned or to pay the said charges as claimed by the defendant. The defendant was requested to return the cheque but to no avail. The plaintiff filed a suit for permanent injunction in the Court of learned Additional Civil Judge (Sr. Divn.), Jalandhar. The defendant threatened to demolish the construction. Therefore, the plaintiff again filed another suit for permanent injunction restraining the defendant from demolishing any part of the property. The order was passed by the trial Court and the defendant had preferred an appeal. The said appeal was dismissed by the Court of learned District Judge, Jalandhar. In the said civil litigation, Kanungo was appointed to verify as to whether the construction has been raised within the municipal limits of Kartarpur or not. The local commissioner reported that the construction was not within the municipal area of Kartarpur. Under

RSA No.862-2012

these circumstances, the alleged notices, filling of blank cheque received from the plaintiff, is an illegal act. The defendant has no authority to present that cheque and to claim Rs.3,88,900/- for raising construction without sanctioned site plan. The plaintiff served statutory legal notice to the defendant but no reply was given. Ultimately, the plaintiff filed the present suit for declaration along with relief of mandatory injunction.

Upon notice, the defendant resisted the suit and filed written statement taking various preliminary objections. It was pleaded that the plaintiff has constructed Maharaja Banquet Hall/Kitty Hall in khasra Nos.1004, 1008, 1009 and 1010. The site plan produced by the plaintiff is wrong and incorrect. The suit filed by the plaintiff has become infructuous as she submitted a cheque on 18.01.2001, which was dated 27.12.2000 and this cheque was sent to the bank for encashment. The cheque was presented on the assurance of the plaintiff that it would be encashed. However, the cheque was dishonoured and the defendant-Municipal Committee, Kartarpur filed a complaint under Section 138 of the Negotiable Instruments Act, which is pending in the Court of Sh. Rajinder Aggarwal, JMIC, Jalandhar. The plaintiff also filed a suit for permanent injunction restraining the defendant from misusing the said cheque. That case is also pending in the Court of learned Civil Judge (Sr. Divn.), Jalandhar. The stay application filed by the plaintiff regarding this cheque was declined and the appeal preferred by the plaintiff was also dismissed by learned District Judge, Jalandhar vide

RSA No.862-2012

order dated 26.11.2001. The plaintiff is estopped by her own act and conduct from filing this suit. The plaintiff submitted an application dated 13.12.2000 that she is ready to submit the building plan within 4-5 days. After calculating the amount by the officials of M.C, the plaintiff had given cheque of Rs.3,88,900/- in the office of M.C.Kartarpur. The land in dispute falls within the municipal limits as per the notification dated 20.08.1976. It was mandatory for the plaintiff to get the building plan sanctioned before raising construction. Some construction was raised in the year 1994 and some construction was raised during the pendency of the suit. Notices were sent by the defendant to the plaintiff dated 18.09.2000. The defendant is performing its statutory duties under the law. The defendant is well within the right to demolish illegal, unauthorized construction, if any. The District Town Planner has no authority and power to deal with the property, which does not fall within their limits. It is admitted that the plaintiff had filed a suit for permanent injunction in which Kanungo was appointed as Local Commissioner by the Court of learned Additional Civil Judge (Sr. Divn.), Jalandhar. The report submitted by the Kanungo does not show the khasra numbers. The answering defendant has every right to recover the amount of cheque by adopting proper procedure and suit filed by the plaintiff is without merit. Other averments in plaint were denied and dismissal of suit was prayed for.

RSA No.862-2012

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

- “1. *Whether plaintiff is entitled for declaration as prayed for ? OPP*
2. *Whether plaintiff is entitled for permanent injunction as prayed for ? OPP*
3. *Whether present suit is not maintainable in the present form? OPD*
4. *Whether plaintiff has not come to the Court with clean hands and has suppressed the material facts from the Court? OPD*
5. *Whether site plan attached with the plaint is wrong? OPD*
6. *Whether suit of the plaintiff is barred U/O 2 Rule 2 CPC? OPD*
7. *Whether suit is liable to be rejected U/O 7 Rule 11 CPC? OPD*
8. *Relief.”*

After appreciating the evidence, the Court of first instance decreed the suit. Feeling aggrieved, the defendant preferred an appeal which has been dismissed by the lower Appellate Court. Hence, this regular second appeal.

Learned counsel for the appellants has referred to following substantial questions of law formulated in the grounds of appeal for consideration by this Court:

- (i) *Whether both the learned courts below have erred gravely in deeming the onus to prove upon the appellant as if the property in dispute of the*

RSA No.862-2012

respondent falls outside the limits of M.C. Kartarpur; upon the appellant?

- (ii) Whether both the ld. Courts below have erred in passing the decree without identifying the property in dispute?*
- (iii) Whether there is an infirmity of excluding, ignoring and overlooking abundant material and evidence which if considered in proper perspective would have led to a conclusion contrary to the one taken by the ld. Courts below?*
- (iv) Whether the ld. Courts below have failed to comprehend the evidence in the right perspective?*
- (v) Whether the ld. Courts below have illegally interpreted the documents in favour of the respondent?*
- (vi) Whether the findings recorded by both the ld. Courts below are perverse and therefore, liable to be set aside?*

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

Learned counsel for the appellant has contended that both the courts below have misread the evidence. The findings recorded by the courts below are against the law and facts on record. Both the courts below have ignored the fact that Punjab State Electricity Board is charging octroi on the bills being issued to the consumer. The material evidence has not been taken into consideration specifically notification dated 4.4.1989 (Ex.D-12).

RSA No.862-2012

Per contra, learned counsel for the respondent vehemently opposed the contentions of learned counsel for the appellant and supported the impugned judgments and decrees of the courts below.

I have considered the rival contentions of learned counsel for the parties.

Admittedly, earlier the plaintiff-respondent had filed a civil suit for permanent injunction where identical issue was involved as to whether the area of the plaintiff falls within the territorial limits of Municipal Council, Kartarpur. In that suit, the finding was recorded that the area of the plaintiff does not fall within the municipal limits of Kartarpur and the provisions of the Municipal Act does not apply. Again an attempt was made to demolish the building. Again a civil suit for declaration and permanent injunction was filed which has been decreed by the learned trial court and the judgment has been affirmed by the lower appellate court. Once the finding has been recorded that the property in question does not fall within the municipal limits, the provisions of the Municipal Act will not apply. In the notification, khasra Nos.1004, 1008 to 1010 have not been mentioned.

Learned counsel for the appellant has failed to show that findings recorded by the courts below that area does not fall in municipal limits, are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. Consequently, the concurrent findings of fact recorded by the courts below do not warrant interference in regular second appeal. No question

RSA No.862-2012

of law, muchless substantial question of law, as alleged, arises for adjudication in this second appeal.

No other point has been urged.

Dismissed.

26.02.2016

paritosh/parveen kumar

(Paramjeet Singh Dhaliwal)
Judge