

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.3341 of 2013 (O&M)

Date of Decision.17.08.2016

Sudarshan Singh

.....Appellant

Vs.

Prem Kumar and another

.....Respondents

2. COCP No.3696 of 2012

Prem Kumar

.....Petitioner

Vs.

Vijay Bhaskar and others

.....Respondents

Present: Mr. K.B. Raheja, Advocate
for the appellant in RSA No.3341 of 2013.

Mr. P.K. Bansal, Advocate
for the petitioner in COCP No.3696 of 2012.

Mr. Shakti Mehta, Advocate
for respondent No.1 in COCP No.3696 of 2012.

Mr. P.K. Longia, Sr. Panel counsel for UOI
for respondent Nos.2 to 4 in COCP No.3696 of 2012.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

The appellant-defendant is aggrieved of the finding rendered by the lower Appellate Court whereby while dismissing the appeal of the respondent-plaintiff who sought for mandatory injunction of the alleged encroachment against the appellant-defendant, the lower Appellate Court directed a copy of the judgment to be sent to Cantonment Board to remove

proceed against the appellant-defendant.

Mr. K.B. Raheja, learned counsel for the appellant submits that the sale deed dated 16.08.1991 proved on record i.e. Ex.D2, is with regard to the superstructure and the receipts regarding the payment of water tax, have been proved on record as Ex.D4. In fact, the land underneath the room is owned by the Cantonment Board/Union of India. It is only the superstructure which was being exchanged/purchased by the parties, therefore, the lower Appellate Court ought not to have issued directions to the Cantonment Board to take action for removing the encroachment.

It is brought to the notice of the fact that in pursuance of the aforementioned directions, contempt petition No.3696 of 2012 for non-compliance of the direction has been filed and Mr. Shakti Mehta, learned counsel for the respondent submits that in pursuance of the direction given by the lower Appellate Court, an action had been taken in accordance with law i.e. passing the order of demolition and the said order was assailed in appeal before the District Judge. That appeal has also been dismissed on 06.10.2015 with the observation that the Cantonment Board shall take action in accordance with law.

I have heard learned counsel for the parties, appraised the paper book and of the view that no doubt the judgment and decree passed by the lower Appellate Court is in favour of the appellant-defendant but the finding given in paragraph 18 of the impugned judgment and decree is against him. Once the appellant-defendant had been paying the taxes to the Cantonment Board and they did not take any action in view of the fact that the Board was made party as defendant No.2 in the suit but they did not contest the suit, nor filed the written statement, in essence, their defence

was struck off. Even if at all, the Cantonment Board in its wisdom thinks that the entire construction of the house has been raised in the Cantonment area, they can take action as per the law but not by pick and choose policy.

In view of the aforementioned, the lower Appellate Court ought not to have given such kind of directions and the directions issued by the lower Appellate Court in paragraph 18 of its judgment and decree are hereby expunged. Both the regular second appeal and the contempt petition are disposed of with the above observations.

(AMIT RAWAL)
JUDGE

August 17, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No