

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 498 of 2013 (O&M)

Date of Decision : 11.11.2016

Nihal Chand

....Appellant

Versus

Municipal Council, Rewari and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Satish Chaudhary, Advocate
for the appellant.

Surinder Gupta, J. (Oral)

Heard.

2. Plaintiff-appellant aggrieved by concurrent judgments of Courts below dismissing the suit filed by him and Nandu, seeking the relief of permanent injunction with regard to property shown with blue colour and marked 'ABCD' in the site plan (Ex. P-4) have preferred this regular second appeal.

3. Case of plaintiffs, in brief, is that they are joint owners in possession of residential property situated at Mohalla Sanghi Ka Bass, Rewari alongwith proforma defendant no. 3-Om Parkash. This property was purchased by Parbhati Ram, their father, vide sale deed dated 11.11.1964. They have been issued notice dated 29.10.2002 by the Municipal Council, Rewari directing them to remove the construction existing in the suit property. Boundary walls were raised about 37 years and defendant no.1 has no right to get the same removed.

4. Defendants no. 1 and 2 contested the claim of plaintiffs *inter alia* pleading that plaintiffs have encroached on the public property. The disputed portion is a public square. Rain water and drainage pipe of one

Mehar Chand's house falls in public square. On inspection by Municipal Council, Rewari it was found that site plan (Ex. D-1) submitted by plaintiffs for raising construction on the suit property was not according to the spot. Rather it includes the area covered by public square.

5. Learned Civil Judge (Junior Division), Rewari dismissed the suit with observation that site plan (Ex. D-1) submitted by plaintiffs in the year 2001 for raising construction over the suit property pertained to the area of 66.38 sq. meter. Site plan attached with the sale deed in favour of father of plaintiffs (Ex. P-3) and site plan produced by plaintiffs alongwith site plan (Ex. P-4) do not talley with the proposed site plan (Ex. D-1). The property purchased by plaintiffs was lesser in area while in the site plan (Ex. D-1) the area on which construction was sought to be raised was enhanced to 66.38 sq. meter.

6. Learned Ist Appellate Court on perusal of record affirmed the observations made by learned trial Court. It also referred to previous litigation relating to same property in Civil Suit No. 994 of 1994 titled 'Nihal vs. Badlu etc.'. Claim of plaintiff-Nihal Chand in that suit was also based on sale deed dated 11.11.1964 and Municipal Council, Rewari was party in that suit. The relevant observations of Ist Appellate Court contained in para 19 of the judgment to this effect are reproduced as follows:-

“19. In the present case, the appellants-plaintiffs have concealed the material facts from the court as they have not pleaded the facts regarding the previous litigation between the parties. The present appellant-plaintiff Nihal Chand at earlier occasion filed a civil suit no. 994 dated 08.02.1994 impleading Municipal Council,

Rewari as party titled Nihal Chand vs. Badlu etc. and that suit was for permanent and mandatory injunction pertaining to the suit property wherein the plaintiff claimed ownership as well as possession on the basis of same sale deed dated 11.11.1964 and that civil suit of the plaintiff was dismissed on 07.02.2001 and certified copy of this judgment has been placed on record as Ex. DC. The present appellants-plaintiffs aggrieved with this judgment Ex. DC preferred appeal in the court of learned Additional District Judge, Rewari which was dismissed on 05.12.2003 as per certified copy of appeal judgment Ex. DB placed on record. Hence, the title of the plaintiffs on the basis of sale deed dated 11.11.1964 (now Ex. P-2) has already been declined by the court of competent jurisdiction and now the judgments Ex. DB and Ex. DC have got finality between the parties and now the present appellants-plaintiffs are estopped to file the present suit claiming again their title on the basis of sale deed Ex. P-2 dated 11.11.1964. Hence, the appellants-plaintiffs have concealed the material facts from the court regarding earlier litigation between the parties and hence, the appellants-plaintiffs have not been established owner in possession over the suit property which is shamlat chowk vesting in municipal council and being used by general public.”

7. It has also come on record that windows and doors of the

houses of Mahender Singh and Puran open towards suit property and rainy water of the house of Mehar Chand is drained out in the disputed property, which is managed by Municipal Council, Rewari.

8. Learned counsel for the appellant fairly conceded that earlier litigation was also there but relief in that case was sought against Badlu etc., though, Municipal Council was party. This fact is not disputed that claim of plaintiff-appellant in that suit was also based on the same sale deed and his plea that he is owner of the suit property was not accepted.

9. On perusal of judgments passed by both the Courts below, I find no reason to interfere with the concurrent findings of fact that plaintiffs are not owner of the suit property as shown in site plan (Ex. D-1). Even, Municipal Council, Rewari has no objection or claim with regard to the property purchased by father of plaintiffs vide sale deed dated 11.11.1964. The only plea, which was contested is regarding the area included by plaintiffs beyond the land purchased by their father vide above sale deed.

10. On perusal of judgments of Courts below and paper-book, I find no legal or factual infirmity therein calling for any interference. No substantial question of law, requiring determination, arises in this appeal, which has no merit.

Dismissed.

November 11, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/Reasoned

Yes/No

Whether Reportable

Yes/No