

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

**R.S.A No.879 of 2013(O&M)
Date of decision :09.11.2016**

Bal Krishan

..... Appellant

Versus

Municipal Council Thanesar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Naresh Kaushik, Advocate
for the appellant.

Mr. Namit Gautam, Advocate
for the respondent no.1.

Mr.Anil Kumar Yadav, Addl.AG, Haryana.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 11.09.2012 passed by the learned Additional District Judge, Kurukshetra, whereby the appeal filed by appellant-plaintiff against the judgment and decree dated 25.07.2011 passed by the learned Civil Judge (Jr. Division), Kurukshetra, has been dismissed.

2. Appellant-plaintiff filed the suit for declaration to the effect that the land marked NOPR in the site plan attached with the plaint comprised of Khasra no. 215/19 situated at Village Darra-Kalan, Thanesar, left as a park has re-vested in the plaintiff as owner and the plaintiff be declared as owner in possession of the land in question. In the consequential relief, he has prayed a decree for mandatory injunction directing the defendants to remove the material collected for installing

and construction of the tubewell and restraining them permanently from installing the tubewell or changing the nature of the suit land in any manner forcibly or illegally on the plea that earlier Roop Devi, the mother of appellant-plaintiff was the owner of the aforesaid land and thereafter on the basis of the Civil Court decree, he has become the owner thereof. It was also pleaded that the action of the respondent-defendant is against the town planning scheme as well as the compromise between the parties in civil appeal no. 10/13 of 1982 filed by Roop Devi, the mother of the appellant-plaintiff.

3. The suit was contested by the defendants on the grounds *inter alia* that the town planning scheme was initiated by the land owners through District Town Planner and the suit land in the un-built area of T.P. Scheme No.1 Part-II was sanctioned by the State Government as per drawing no. DTP(KU) of 1975. It was further pleaded that appellant-plaintiff has admitted that out of his land, land measuring 1400 sq. yards was allocated for park on the basis of the compromise. The said compromise was binding on the plaintiff-appellant as well as respondent no.1. It is further pleaded that the park was developed therein as per the scheme the tubeweel has been installed for installing the fountains in the park and for development of the park. Defendant no.2 was entrusted with the maintenance of the water supply and sewerage. It is further pleaded that Municipal Council, Thanesar is the owner of the park under Section 61 of the Haryana Municipal Act. Respondents have decided to install the tubewell according to its resources. With these pleas, the defendants-respondents pleaded for dismissal of the suit.

4. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 16.09.2010:-

1. Whether the plaintiff is owner of the land in question? OPP
2. If issue No.1 is proved, whether the plaintiff is entitled for consequential relief as prayed for? OPP.
3. Whether the suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the suit is time barred? OPD.
5. Whether the plaintiff has no cause of action to file and maintain the present suit? OPD.
6. Whether the suit of the plaintiff is hit by the principle of res judicata? OPD.
7. Whether the plaintiff has concealed the true and material facts from the Court? OPD.
8. Relief.

5. As no evidence was led by the plaintiff to prove his pleas, so the suit of the plaintiff was dismissed by the learned trial Court vide impugned judgment and decree dated 25.07.2011.

6. Aggrieved with the aforesaid judgment and decree, appellant-plaintiff preferred the appeal. The same has also been dismissed by the learned Additional District Judge, Kurukshetra vide impugned judgment and decree dated 11.09.2012. Hence this Regular Second Appeal.

7. I have heard Mr. Naresh Kaushik, Advocate learned counsel for the appellant, Mr. Namit Gautam, Advocate learned counsel for the respondent no.1, Mr. Anil Kumar Yadav, Addl. AG, Haryana, Advocate and have carefully gone through the paper book.

8. Initiating the arguments, learned counsel for the appellant contended that the learned trial Court has not given the adequate opportunities to the appellant-plaintiff to adduce his evidence. The action of the defendant-respondents was against the Town Planning Scheme and the compromise effected in Civil Appeal No. 10/13 of 1982 decided on

26.02.1982 by the learned Additional District Judge, Kurukshetra. Thus, he pleaded that the suit filed by the appellant-plaintiff has been wrongly dismissed by the learned Courts below. The case should be remanded to the learned trial Court to afford adequate opportunities to the plaintiff-appellant to adduce the evidence and then the decide the suit afresh.

9. On the other hand, learned State counsel contended that adequate opportunities were given to the plaintiff, but he failed to produce any iota of evidence in support of his case. Thus, there is no illegality in the impugned judgment and decrees passed by the learned Courts below.

10. I have duly considered the aforesaid contentions.

11. This fact is not disputed that issues in this case were framed by the learned trial Court on 16.09.2010 and thereafter, the case was adjourned to 04.10.2010 for the evidence of the plaintiff-appellant. But, on that date, no witness was produced and adjournment was sought. The case was adjourned to 06.12.2010 for evidence of the plaintiff. Again no evidence was produced and case was adjourned to 21.12.2010. Then to 29.03.2011 and then to 06.05.2011. The case was again adjourned to 20.05.2011 for the same purpose. It was again adjourned to 07.07.2011, but no evidence was produced on all these dates. Then, finally the learned trial Court adjourned the case to 25.07.2011 and the last opportunity was afforded to the plaintiff to adduce the evidence. But, even then, appellant-defendant did not adduce any evidence. In this way, the appellant-plaintiff has availed eight opportunities to adduce his evidence but he has not produced any evidence to support his case. The Hon'ble Apex Court

in Case **M/s Shiv Cotex Vs. Tirgun Auto Plast P. Ltd. And others**

2011(4) R.C.R (Civil) 807 has laid down as under:-

“16. No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in proviso to Order XVII Rule 1 CPC is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order XVII Rule 1 CPC should be maintained. When we say 'justifiable cause' what we mean to say is, a cause which is not only 'sufficient cause' as contemplated in sub-rule (1) of Order XVII CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The list is only illustrative and not exhaustive. However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit - whether plaintiff or defendant - must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril.”

In view of the aforesaid ratio of law laid down by the Hon'ble Apex Court, no fault can be found with the closure of the

evidence of the appellant-plaintiff by the learned trial Court. Rather, the appellant-plaintiff has availed more than adequate opportunities to adduce the evidence, but not an iota of evidence was produced.

12. It is settled principle of law that the pleadings cannot take the place of proof. The party has to lead cogent and convincing evidence to establish the plea raised in the pleadings. In the instant case, as no evidence has been led by the appellant-plaintiff, so the pleas raised by him in the plaint are not established.

13. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

14. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

15. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

November 09, 2016

s.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No