

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.5199 of 2015 (O&M)

Date of Decision: 14.01.2016

Harish Chander and others

...Appellants

Vs.

Municipal Committee, Rohtak

....Respondent

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present:- Mr. Sandeep Parkash Chahar, Advocate  
for the appellants.

**Amol Rattan Singh, J (Oral)**

This is the plaintiffs' appeal against the judgment and decree passed by the learned Civil Judge (Senior Division), Rohtak, dated 10.12.2012 and the learned District Judge, Rohtak, dated 04.12.2013, dismissing their suit and appeal respectively.

2. The plaintiffs had filed a suit for possession claiming that they are owners of Plot No.3, measuring 189 sq. yds. demarcated by a site plan, which was previously owned by one Subhash Chander and was later purchased by their mother Smt. Parbati, vide sale deed No.2753/1, executed on 09.11.1966 and registered on 09.12.1966. She is stated to have taken possession of the plot, and after her death, the appellants (plaintiffs before the trial Court) came into possession of it.

The averment in the plaint was that the Administrator/Executive Officer of the Municipal Committee, Rohtak, had forcibly taken possession of the plot in January 2005 and had got a

boundary wall constructed around the suit plot, as also adjoining plots No.1, 2 and 4.

3. The Municipal Committee-respondent not having vacated the plot despite requests from the appellants, the suit had been filed by the appellants.

4. In its written statement before the trial Court, other than the ground of non-maintainability and locus, it had been contended that the suit property had been earmarked for a public purpose in Town Planning Scheme No.7 framed by the Government and a park had been developed on the spot, which was being maintained by the Municipal Committee, Rohtak and the property actually vested in the Committee itself.

5. On issues having been framed as to whether the plaintiffs-appellants are owners of the suit property and are entitled to its possession, appellant No.1 appeared as PW-1 and filed his affidavit, reiterating the averments made in the plaint. He also produced a certified copy of sale deed No.2753, by which his mother is stated to have purchased the plot in question.

The appellants also examined one Tajinder Kumar, who also swore an affidavit supporting the case of the appellants, that the plot owned by them, as also three other plots, had been occupied by the Municipal Committee-respondent.

6. In its defence, the respondent examined Om Parkash, Building Inspector, Municipal Corporation, Rohtak, as DW-1, who also swore an affidavit and reiterated the contents of the written statement. The

respondent also produced the following documents by way of evidence in their defence:-

Exhibit D1 Copy of detail of vision splays at junction of roads

Exhibit D2 Letter dated 14.10.1977

Exhibit D3 Bill for the expenses incurred on the park

Exhibit D4 Detail of vision splays at junction of roads

Exhibit D5 Statement showing area under streets and open spaces in the proposed scheme

Exhibits D6 Copies of Jamabandi for the year 1967-68 to D8

Exhibit D9 Copy of Jamabandi for the year 1962-63

Exhibit D10 Jamabandi for the year 1962-63

Exhibit D11 Letter dated 27.09.1977

7. In arguments before the first Court, the respondent also submitted that though the plaintiffs-appellants had based their ownership on the sale deed by which the plot was purchased by their mother, Smt. Parbati, from Subhash Chander, however, they had not been able to establish that even Subhash Chander was actually the owner in possession of the property; hence, he could not have transferred a title that he himself did not possess.

Other than that, the fact that a park had been developed on the spot, in the year 1976, was also submitted before the trial Court.

8. Having considered the evidence, the pleadings and arguments,

the trial Court held against the appellants, on the ground that they had not been able to establish any title over the suit property, on the basis of any documentary evidence and as such, they had no locus to stand on. It was also held that the respondent-Municipal Committee had produced a letter dated 14.10.1977 (Ex. D2), wherein it had been stated that Scheme No.7 was accepted in the year 1957 and had been implemented to the extent of 90% and that a publication was got effected by the Municipal Committee, with regard to certain amendments which were suggested in the Scheme to which nobody had raised any objection. Consequently, an order had been passed by the competent authority on 19.10.1977, wherein it had been stated that the park was being maintained since 1976 and that the boundary wall had already been completed, with earth also filled in, along with installation of a water tap and planting of grass etc.

Thus, on the basis of Ex. D2, dated 14.10.1977, the trial Court held that the park was obviously developed in the year 1976, whereas the suit was instituted by the plaintiffs in the year 2007 and, as such, their mala fide intention was obvious in trying to take possession of a property owned by the Municipal Committee. It was further held that when the development of the park was taking place, the appellants had not initiated any legal action to stop it. Consequently, the suit was dismissed.

9. In the appeal filed by the appellants before the lower appellate Court, the same arguments were raised by the appellants and the respondent, as had been raised before the lower Court, which were again rejected by the appellate Court on the same reasoning, as has been discussed above with

reference to the first Court. The appeal was also, consequently, dismissed.

10. Mr. Sandeep Parkash Chahar, learned counsel appearing for the appellants, reiterated the same arguments as were made before the Courts below and on query by this Court, he very fairly admitted that other than that he had nothing further to say, including the fact that there was no document by which he could point to the ownership over the suit property/plot of Sh. Subhash Chander, from whom the appellants' mother is stated to have purchased the property in the year 1966.

11. Keeping in view the above and the reasoning already given by the Courts below, to which nothing could be added before this Court, I find no ground to interfere with the judgments that have been impugned before this Court. In any case, no question of law arises for adjudication by this Court, in a second appeal against the first Courts' judgment and decree.

As a result of the above, the appeal is dismissed in limine, with no order as to costs.

Since the appeal is not being entertained on merits, the question of condoning the delay of 1 day in filing the appeal and 492 days in re-filing the appeal, is rendered academic.

**January 14 , 2016**

vcgarg

**(AMOL RATTAN SINGH)  
JUDGE**