

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

R.S.A No.5709 of 2014

Date of decision : 27.05.2016

Brij Lal and others

..... Appellants

Versus

Municipal Commitee, Rohatk

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Parvinder Singh, Advocate
for the applicant-appellant.

- 1. Whether Reporters of Local papers may be allowed to see the judgment?Yes.**
- 2. To be referred to the Reporters or not?Yes.**
- 3. Whether the judgment should be reported in the Digest?Yes.**

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 14.07.2014 passed by learned District Judge, Rohtak, vide which the appeal filed by the appellant-plaintiffs against the judgment and decree dated 30.05.2013 passed by the learned Additional Civil Judge (Senior Division), Rohtak, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.
3. The appellant-plaintiffs have filed the suit for possession of plot no.2 measuring 265 sq. yards shown by letters 'EHIJ' in sky blue

colour in the site plan attached with the plaint situated at Gandhi Nagar behind liberty cinema within municipal limits of Rohtak.

4. As per the averments in the plaint, appellant-plaintiffs are owners of plot in dispute, which was previously owned by Sh. Subhash Chander son of Sh. Narain Dass and was purchased by the plaintiffs vide sale deed no. 2327/1 executed on 28.09.1967 and registered on 09.10.1967. It is alleged that the plaintiff-appellants have taken the possession of the said plot, but the Administrator/ Executive Officer, Municipal Committee, Rohtak has forcibly taken the possession of the plot in question in January 2005 and got a boundary wall constructed around the said plot along with adjoining plots no.1, 3 and 4. Hence, the suit.

5. The suit has been contested by defendant-respondent Municipal Council, Rohtak on the grounds *inter alia* that the plaintiffs are not the owners of the suit property as the suit property has been left for public purposes in Town Planning Scheme No. 7 framed by the Government and a park has been developed at the spot, which is being maintained by the defendant and the suit property vests in Municipal Council, Rohtak.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 08.04.2008:-

1. Whether the plaintiffs are owners of the suit property?OPP
2. If issue no.1 is proved, whether the plaintiffs are entitled to the possession of the suit property?OPP
3. Whether the suit is not maintainable in the present form?OPD
4. Relief.

7. On appreciation of evidence on record and contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit filed by the plaintiff-appellant vide impugned judgment and decree dated 30.05.2013.

8. Aggrieved with the aforesaid judgment and decree, they preferred the appeal. The same has also been dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 14.07.2014. Hence, this Regular Second Appeal.

9. I have heard Mr. Parvinder Singh, Advocate, learned counsel for the appellant and have carefully gone through the paper book.

10. Initiating the arguments, learned counsel for the appellants contended that the appellant-plaintiffs are owner in possession of the plot in dispute on the basis of the sale deed Ex.P-1 executed by Sh. Subhash Chander son of Narain Dass on 28.09.1967 and registered on 09.10.1967. He contended that the presumption of truth is attached to the said registered sale deed as the same is more than 30 years old document. The contents mentioned therein cannot be disputed. He further contended that there is no evidence on record to show that the respondent-defendant is the owner of the plot in dispute. The appellant-plaintiffs have acquired the title to the suit property by way of inheritance from their father, who was earlier owner in possession of the suit property. He contended that in January 2005, the defendant has forcibly encroached upon the plot in question. Thus, the appellants are entitled for possession of the plot in dispute on the basis of their title.

11. I have duly considered the aforesaid contentions.

12. In the written statement, the defendant-Municipal Council has categorically pleaded that Sh. Subhash Chander, vendor of the appellants had no concern with the suit land and question of passing over any title from Subhash Chander to the plaintiffs does not arise. It was further the case of the defendant-respondent that the Government has approved a Town Planning Scheme No. 7, vide which this land has been left for the public purposes and at present a park exists at the spot. It has its boundary wall. The park has been constructed and is being maintained by the defendant-Municipal Council, Rohtak. In view of the aforesaid plea raised by the defendant-Municipal Council, it has become the duty of the appellant-plaintiffs to establish their title qua the suit property.

13. As per the admitted case of the appellants, they allegedly derived the title to the suit plot on the basis of the sale deed Ex.P-1 executed by Subhash Chander. So, it was incumbent upon the appellant-plaintiffs to establish the title of their vendor namely Subhash Chander. But, absolutely no evidence has been adduced by the appellants to prove the title of their vendor Subhash Chander. So, appellants cannot acquire any title to the suit property on the basis of the sale deed Ex.P-1 executed by Subhash Chander, who himself is not proved to be the owner of the plot in dispute.

14. The learned trial Court has categorically mentioned that the defendant has produced the letter dated 14.10.1977 Ex.D-1, wherein it has been mentioned that Town Planning Scheme was implemented to the extent of 90 %. The learned trial Court has also given reference of an official order dated 19.10.1977, which shows that the park was developed

in the year 1976. Boundary wall was already completed and earth has also been got filled therein. Appellant-plaintiff Brij Lal has also admitted in the cross-examination that a park has been developed on the suit property. The plea raised by the appellants that the suit plot was forcibly occupied by the defendant-Municipal Council in the year 2005 carries no substance as the development of the park take long time as the earth has to be levelled and plants have to be planted.

15. On the basis of evidence available on record, the learned First Appellate Court has categorically mentioned that the plot in dispute is part of a public park, which was left by the Government in Town Planning Scheme No.7. The said park was carved into four plots unauthorisedly and remaining three plots were also sold to different persons. The Town Planning Scheme was accepted in the year 1957 and was implemented up to the extent of 90 %. The boundary wall was constructed, water tap was also got installed and grass was planted in the year 1976. The present suit has been filed in the year 2007 i.e. after more than 30 years of developing the park. The site in dispute is a park developed and being maintained by the defendant-Municipal Council, which vests in it. So, the appellant-plaintiffs have failed to establish their ownership qua the plot in dispute. Thus, they cannot seek the possession of the plot in dispute on the basis of title. Therefore, there is no ground to interfere with the concurrent findings recorded by the learned Courts below.

16. Resultantly, no question of law, much less, the substantial question of law arises in the present appeal.

17. Therefore, the present appeal being devoid of merits, is

hereby dismissed with no orders as to costs.

May 27, 2016
s.khan

(DARSHAN SINGH)
JUDGE