

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

Date of decision: 26.04.2017

1. RSA No.1839 of 1990 (O&M)

Hari Ram Bewal

... Appellant

Vs.

Nagar Palika Narnaul

... Respondent

2. RSA No.2325 of 1990 (O&M)

Hari Ram Bewal

... Appellant

Vs.

Municipal Committee Narnaul and another

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sanjay Mittal, Advocate
for the appellant.

Mr. Mahabir Singh Sindhu, Advocate
for the respondent(s).

RAMESHWAR SINGH MALIK, J. (ORAL)

These two identical regular second appeals, at the hands of unsuccessful plaintiff, are directed against the impugned judgments and decrees passed by the learned Courts below, whereby the learned Additional District Judge vide his impugned judgment and decree dated 23.08.1990, accepted the first appeal of the defendant-Municipal Committee, setting aside the judgment and decree dated 16.09.1986 passed by the learned trial Court partly decreeing the suit of the plaintiff. Both these appeals are being decided together vide this common order, with the consent of learned counsel for the parties, as both these

appeals are arising out of similar set of facts. However, for the facility of reference, facts are being culled out from RSA No.1839 of 1990 (Hari Ram Bewal Vs. Nagar Palika Narnaul).

Brief facts of the case, as noticed by learned first appellate Court in para 2 of its impugned judgment, are that the subject matter of litigation was a Gawara (plot) measuring 1233 sq. yards 3 sq. feet situated in Mohalla Rao Ka, Narnaul as shown in red in the plan annexed with the plaint. This Gwara was bounded on east by a rasta 10' in width and thereafter, plot belonged to Pema Ram, on the west by a rasta and the house of Suraj Bhan, on the north by rasta and thereafter by Gajraj Cement Pipe Factory and on the south by a rasta. The plaintiff Hari Ram claimed that he was owner in possession of the said Gwara and had raised certain construction over this plot and the defendant-Municipal Committee had no concern with it. He further asserted that he got the site plan sanctioned from the Municipal Committee which was accorded vide letter bearing No.24 dated 11.02.1980. It was further alleged that when he was raising construction, the employees of the defendant-Municipal Committee came to the spot on 16.02.1980 and stopped him from raising the construction. He told them regarding the sanction order. The Administrator, Municipal Committee came on the spot and got the wall measuring 60/70 feet demolished and also ordered to remove the construction placed on the site. The plaintiff Hari Ram, therefore, commenced the suit seeking a decree of permanent injunction restrained the defendant from demolishing the said wall.

Having been served in the suit, defendants put appearance and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is the owner in possession of the property in dispute? OPP
2. Whether the impugned order dated 18.02.1980 issued by the D.C. Narnaul is illegal, against facts, against law, arbitrary null and void? OPP
3. Whether the Deputy Commissioner, Narnaul has validly revoked the resolution No.24 dated 11.02.1980 as alleged? OPD
4. Whether the suit is bad for non-joinder of necessary parties? OPD
5. Relief.

In order to substantiate their respective pleaded cases, both the parties produced their documentary as well as oral evidence. After going through the evidence brought on record and hearing learned counsel for the parties, learned trial Court came to the conclusion that plaintiff has partly proved his case. Accordingly, the suit for permanent injunction restraining the defendants from demolishing the construction raised by the plaintiff over the suit property, as detailed in the head note of the plaint, was partly decreed vide judgment and decree dated 16.09.1986.

Both the parties felt aggrieved. Defendants filed their Civil Appeal No.47 of 1986, seeking setting aside the abovesaid judgment and decree of the learned trial Court, whereas Civil Appeal No.716 of 1986 was filed by the plaintiff, praying for decreeing his suit in toto. The appeal filed by the plaintiff was dismissed and the appeal filed by the defendant-Municipal Committee was allowed by the learned Additional District Judge, vide his impugned judgment and decree dated 23.08.1990. Hence these two identical regular second appeals

at the hands of plaintiff.

Appeal bearing RSA No.1839 of 1990 was admitted for regular hearing vide order dated 12.12.1990 passed by this Court. Similarly, the appeal bearing RSA No.2325 of 1990 was admitted vide order dated 07.02.1991 and it was ordered to be heard with RSA No.1839 of 1990. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

Crucial issue that falls for consideration of this Court in both these appeals is, as to whether the plaintiff who allegedly purchased the suit land from one Parbhati and was supposed to prove the ownership of his vendor, was, as a matter of fact, in a position to prove the ownership of his vendor-Parbhati or not. At the very outset, when confronted with this material aspect of the matter, on which the entire case of the plaintiff is based right from day one, learned counsel for the appellant had no answer and rightly so, it being a matter of record.

Neither the plaintiff-appellant proved the ownership of his vendor namely Parbhati nor said Parbhati was produced by the plaintiff in the witness box before the learned trial Court so that he might have stated something in favour of the plaintiff-appellant. Since the learned trial Court misdirected itself, while not considering this material fact in correct perspective, learned Additional District Judge was well within its jurisdiction to set aside the judgment and decree dated 16.09.1986 passed by the learned trial Court, because of which the impugned judgment and decree deserve to be upheld.

It is the settled proposition of law that appellant being the plaintiff, onus was on him to prove his case by leading cogent and convincing evidence, including proving the ownership of his vendor. Plaintiff is supposed to stand on

his own legs. Alleged weakness of the case of defendants will never be the basis for any Court of law, to decree the suit of the plaintiff, which is otherwise not found worth to be decreed for want of sufficient evidence on record. It was the plaintiff who came to the Court first. However, he failed even to discharge his initial onus qua the ownership of his vendor. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned first appellate Court committed no error of law, while passing its impugned judgment and decree and the same deserve to be upheld, for this reason also.

The suit filed by the plaintiff-appellant was for permanent injunction, on the basis of sale deed executed by Parbhati, in his favour. Once plaintiff could not establish the ownership of his vendor; namely Parbhati, his entire case was bound to fall flat. There was no other sufficient evidence to prove the ownership of the plaintiff. It is also the settled principle of law that once Parbhati was not the owner, he could not have passed any better title in favour of the plaintiff-appellant. Under these peculiar facts and circumstances of the case, plaintiff had no case in his favour right from day one and he was bound to fail. That is what has been held by the learned first appellate Court, while passing its impugned judgment and decree and the same deserve to be upheld, for this reason as well.

Before arriving at its judicious conclusion, learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in the correct perspective. The relevant and cogent findings recorded by the learned Additional District Judge in paras 12 and 13 of his impugned judgment, which deserve to be noticed here, read as under: -

“I have given my due deliberation to these contentions of the

*learned counsel for the parties and, in my view, there is no force in the submission of the learned counsel for the plaintiff/respondent- The poser is as to whether Parbhati was in possession of the disputed land or not. In this connection, there is no authentic evidence to conclude that Parbhati was never in lawful possession of the disputed property. There is solitary statement of Bishamber (PW10) who in examination-in-chief deposed that Hari Ram used to tether buffalo over the disputed land. He further deposed that the suit land was inherited by Parbhati from his ancestors. This statement of this witness is belied by the fact that Parbhati in the sale deed has nowhere mentioned that the suit land was inherited by him from his forefathers. This witness has, thus, prejured on the fact that Parbhati inherited the suit land from his ancestors. Mere tethering the cattle or buffalo does not establish lawful possession of a person. Parbhati had not raised any construction over the suit land except tethering the cattle and owner of the land cannot be said to be out of possession, so as to disentitle him for an injunction merely because the defendant collects cattle on the land or fix his managers or pegs or erects a platform thereon. In this connection, I am fortified by the authority contained in **AIR 1929 Lahore 71 Muhamman Amin Khan and others Vs. Balanda and another**. The statement of Mahabir PW5 is also tainted one and does not inspire the confidence of the Court for the simple reason that mere tethering of the cattle or erecting a chhaper does not constitute the lawful possession. As against the evidence adduced by the plaintiff/respondent, there is pre-ponderance of evidence on*

record to conclude that the suit land vests in the Municipal Committee. It is a part of Nazul land and it is the duty of the Municipal Committee to look after the nazul land. The plan of khasra No.256 to 260 from the register 1943 B.K. denotes that the impugned land was nazul land bearing No.256. The Local Commissioner was also appointed in case Matu Ram Vs. Prema Ram, the certified copy of which is Ex.C5. According to the Local Commissioner, the entire stretch of land lying by the side of a pucca municipal drain on the western side of this plot is vacant municipal land. This report was given as late as in the year 1966. The learned trial Court in para No.7 of its judgment also observed that there is a public latrine constructed on the khasra No.262/10 as shown in the plan Ex.DZ. This latrine could only have been constructed by the Municipal Committee on its own land and therefore, the reasoning given by the learned trial Court on issue No.1 is erroneous and is hereby set aside. This issue is answered against the plaintiff/respondent and in favour of the appellant Municipal Committee.

The findings of the learned trial Court on issues No.2 and 3 were also assailed by the learned counsel for the appellant on the ground that the Deputy Commissioner is empowered u/s 249 to confirm, modify or rescind the order passed by an officer subordinate to him. The order of revocation was passed by the Administrator, Municipal Committee on 16.02.1980 and the resolution was suspended by the Deputy Commissioner on 18.02.1980. If the plaintiff/appellant was aggrieved with the order

of revocation, he could have approached the Commissioner, but nothing has been done at his level, therefore, the order of revocation cannot be said to be illegal as held by the trial Court. The findings on these issues are set aside and these are decided in favour of the appellant and against the plaintiff/respondent.”

During the course of hearing, learned counsel for the appellant could not point out any question of law, much less substantial question of law, which is sine qua non for entertaining any regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that both these appeals are wholly misconceived, bereft of merit and without any substance, thus, these must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, both the abovesaid regular second appeals stand dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

26.04.2017
vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No