

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.2057 of 1990
Date of decision:20.4.2017**

Ram Niwas and another

...Appellants

Versus

Municipal Committee, Mohindergarh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

None for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned judgment of reversal dated 22.8.1990 passed by the learned Additional District Judge, whereby first appeal of the respondent-Municipal Committee was allowed, setting aside the judgment and decree dated 24.12.1985 of the learned trial Court, in the suit for permanent injunction, plaintiffs have approached this Court by way of instant regular second appeal.

Brief facts of the case, as noticed by the learned first appellate court in paras 3 and 4 of the impugned judgment, are that the plaintiffs were owners in possession of a shop and platform (Chabutra) measuring 480 Sq. feet. It was further alleged that the property was purchased by them from one Nagar Mal vide registered sale deed dated 21.8.1965 for a consideration of Rs.2500/-. It was now alleged that the Municipal Committee was bent upon to demolish the Chabutra 4 ½ x 9 ½. It was thus submitted that in case the Chabutra was demolished by the Municipal Committee, the

plaintiffs would suffer irreparable loss and the defendant-Municipal Committee had no right title or interest in the suit land. Since the Municipal Committee defendant had refused to admit the claim of the plaintiffs, they commenced a suit seeking a decree for permanent injunction restraining the defendants from interfering in their quiet possession and from demolishing the alleged Chabutra.

The suit was vehemently contested by the defendant-Municipal Committee on a number of grounds. It was inter-alia contended that the plaintiffs had no right, title or interest in the land underneath the Chabutra and their suit was not maintainable in the present form. It was further submitted that the plaintiffs raised this chabutra without any permission from the Municipal Committee and this chabutra was not in alignment with other buildings thereby obstructing the traffic and the passage to the general public.

On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiffs are owners and in possession of the suit property?OPP
2. whether plaintiffs have constructed chabutra in front of their shop without permission of the defendant committee and they have narrowed and thorough fare; if so what effect?
3. Whether the plaintiffs have no locus-standi to bring the suit?OPD.
4. Whether the suit of the plaintiffs is not maintainable in the present form?
5. Whether any notice was required to be given to the defendant

before institution of the suit, if so to what effect?OPD

6. Whether the defendant No.2 is not a necessary party? OPD

7. Whether the suit is false and frivolous and the defendants are entitle for compensatory costs? OPD.

8. Relief.

With a view to substantiate their pleaded case, plaintiffs produced their oral as well as documentary evidence. Defendants did not lead any evidence and defence of the defendants was struck off by the learned trial court. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiffs have proved their case. Accordingly, suit of the plaintiffs for permanent injunction was decreed, vide its judgment and decree dated 24.12.1985.

Defendant-Municipal Committee filed its first appeal, which came to be allowed by the learned first appellate court, vide its impugned judgment and decree dated 22.8.1990, setting aside the above-said judgment and decree dated 24.12.1985 passed by the learned trial Court. Hence this regular second appeal, at the hands of the plaintiffs.

The appeal was admitted for regular hearing vide order dated 6.11.1990 passed by this Court. That is how, this Court is seized of the matter.

Heard learned counsel for the appellants.

The entire case of the appellants-plaintiffs was based on sale-deed dated 21.8.1965. Vide this sale-deed, plaintiffs were claiming that they had purchased the land measuring 480 square feet from Nagar Mal along with a platform (Chabutra). Sale-deed Ex.P1 is available at page 37 of the

lower court record ('LCR' for short). Site Plan Ex.P2, which is available at page 39 of LCR, was also attached with sale-deed Ex.P1. At the very outset, learned counsel for the appellants was asked to read the sale-deed dated 21.8.1965 (Ex.P1) and point out whether Nagar Mal has, as a matter of fact, sold the platform (Chabutra) to the plaintiffs or he sold only the land measuring 480 square feet covered by the shop.

After reading the sale deed Ex.P1, learned counsel for the appellant had no other option except to concede that as per the sale-deed Ex.P1, plaintiffs-appellants did not purchase platform (Chabutra) along with shop from Nagar Mal. Since Nagar Mal was not the owner of this piece of land covered by platform (Chabutra), he had no authority to sell it nor it was actually sold by him to the plaintiffs. Having said that, this Court feels no hesitation to conclude that the learned trial Court misdirected itself, while misreading the documentary evidence in the form of Ex.P1 and Ex.P2, i.e. sale-deed and site plan, respectively. The learned first appellate court rightly set aside the judgment and decree passed by the learned trial Court and the impugned judgment deserves to be upheld.

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in para 10 of its impugned judgment, which deserve to be noticed here, read as under:-

“I have given due deliberation to these contentions of the learned counsel for the appellants and in my view there is a great force in his submission. According to the allegation of plaintiffs they had purchased the land measuring 480 sq.feet

from Nagar Mal vide registered sale-deed dated 21.8.1965. The recital in the sale deed denotes that only one shop was sold to the plaintiffs. There is no indication that there existed any Chabutra in front of the shop. Had there was any Chabutra, the same would have also be indicated in the sale-deed Ex.P.1. Since there is no indication of the chabutra in the sale deed Ex.P1, therefore, the plaintiffs are estopped by their own act and conduct from urging that they are owners of the Chabutra alongwith shop. The best course available for the plaintiffs was to get the land measuring 480 sq.feet purchased by them from Nagar Mal measured or delimited and they have not done so. The observations of the learned trial court that the sale deed discloses the chabutra in dispute is incorrect. There is nothing to show in the recital of the sale deed Ex.P1 that Nagar Mal had sold the site of the Chabutra alongwith the shop. The trail court in my view has mis-read the documents Ex.p1. Chabutra has been shown on the southern side of the shop of Panna Ram and not on the shop of Nagar Mal. It is follows therefore that the plaintiffs have no claim over the site measuring 4 ½' x 9 ½'. The onus heavily rested upon the plaintiffs to prove that the site underneath the chabutra belong to them. It is true that the Municipal Committee had not adduced any cogent evidence to prove the width of the road or passage street. But this fact in my view does not effect that the case of the parties on merits. It is not denied by the plaintiffs/respondents that the Chabutra extends from the alignment of the other buildings at the site. It is also not disputed that the alleged chabutra was demolished in the emergency and the plaintiffs attempted to raise the chabutra thereby encroaching upon the Municipal property. The findings of the learned trial court on issues No.1 and 2 are erroneous and therefore, these findings are set aside and these issues are decided in favour of the appellant-Municipal Committee and against the plaintiff/respondents. In fact, no cause of action has argued to the plaintiff to commence this

suit as no notice has been served to them by the Municipal Committee. The plaintiffs in para no.4 of the plaint have stated that cause of action accrued to them from the day when the Municipal Committee refused to admit their claim by threatened to demolish the chabutra and these allegations, in my view are incorrect and no cause of action appears to have accrued to them.

As noticed above, neither Nagar Mal was owner of the platform (Chabutra) nor he sold the same to the plaintiffs vide above-said sale-deed Ex.P1 because of which entire case of the plaintiffs-appellants falls flat. In fact, the very basis of the case of the appellants-plaintiffs was this sale-deed Ex.P1, whereby they were claiming that they had purchased the shop along with platform (Chabutra) from Nagar Mal and this plea raised by the plaintiffs-appellants was found factually incorrect and contrary to the record, i.e. the sale-deed itself. Under these facts and circumstances of the case, it can be safely concluded that the learned first appellate court was well within its jurisdiction to pass the impugned judgment and decree and the same deserve to be upheld, for this reason also.

During the course of arguments, learned counsel for the appellants could not point out any patent illegality or perversity in the impugned judgment and decree passed by the learned first appellate court. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court

in *Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286* and *Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179*.

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 the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

20.4.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No