

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

(213)

RSA-3406-2010

Decided on: July 18, 2017.

Municipal Council, Narnaul

.... Appellant

Versus

Shyam Lal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Shashi Kumar Yadav, Advocate, for the appellant.

Mr. J.P. Sharma, Advocate, for respondents No. 1 to 4.

M.M.S. BEDI, J (ORAL)

Plaintiff-respondents No. 5 and 6 had filed a suit for permanent injunction and mandatory injunction directing defendant No.1 Shadi Ram, now represented through respondents No. 1 to 4, to remove the encroachments which had been made in the passage. Appellant Municipal Council, Narnaul was impleaded as defendant No.2.

The suit of plaintiff-respondents No. 5 and 6 was decreed and a direction was issued to Shadi Ram to remove the encroachment in the shape of construction on the passage in dispute. LRs of defendant No.1, Shadi Ram, filed appeal before the Additional District Judge, Narnaul. The Appellate Court has set aside the judgment and decree of the trial Court and allowed the appeal.

It is pertinent to mention here that defendant No.2 Municipal Council, Narnaul, who is appellant here, was impleaded as respondent No.2 before the lower Appellate Court and it was observed in para 20 of the judgment of the lower Appellate Court that defendant No.2 (appellant) had

supported the plaintiffs while filing the written statement but no evidence has been led to prove regarding any unauthorized construction. In the absence of any evidence produced by the Municipal Council in support of the plaintiffs, the appellate Court arrived at a conclusion that there was no unauthorized construction on the spot.

In view of above circumstances, the suit of the plaintiff-respondents No. 5 and 6, was dismissed.

The said plaintiff-respondents have not filed any appeal implying thereby that judgment and decree of the lower Appellate Court has become final between the plaintiff-respondents No. 5 and 6 and the heirs of Shadi Ram.

The appeal has been preferred by defendant No.2, Municipal Committee claiming that in the garb of order passed by the lower Appellate Court, the rights of the Municipal Committee to take an action against unauthorized construction raised by Shadi Ram, has been curtailed.

With the assistance of learned counsel for the appellant, I have gone through the record.

It appears that till date Municipal Committee (now Municipal Council) Narnaul has not taken any steps against Shadi Ram or any one else regarding the property in dispute alleging that there has been unauthorized construction. Besides this, the appellant has got independent legal rights under the Haryana Municipal Act, 1973 to take action against any person who has raised any unauthorized construction.

Without expression of any opinion whether there has been any unauthorized construction by Shadi Ram, this appeal is dismissed with an observation that the judgment passed by the lower Appellate Court has

become final between Shadi Ram and his heirs on one side and the plaintiffs Neeraj Kumar and Sagar Chand respondents No. 5 and 6 on the other hand. The Municipal Committee was merely the proforma defendant before the Courts below. The plea regarding jurisdiction of the Civil Court had neither been raised nor adjudicated in view of the provisions of Haryana Municipal Act, 1973.

The appeal is dismissed with an observation that the judgment and decree dated 05.12.2008 which has been passed by the lower Appellate Court would be binding on the plaintiffs and defendant No.1 (now represented through his heirs) without prejudice to the right of the appellant Municipal Council, Narnaul to take any action in accordance with the provisions of Haryana Municipal Act, 1973 in case there is any encroachment on the land belonging to the Municipal Council.

(M.M.S. BEDI)
JUDGE

July 18, 2017
harsha

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No