

RSA No. 2033 of 2011 (O&M)

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

**RSA No. 2033 of 2011 (O&M)
Date of Decision: 6.9.2017**

Housing Board Haryana and another

.....Appellants

Vs.

Vijesh Jain and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr.Durgesh Aggarwal, Advocate
for the appellants.

Mr. Sanjay Jain, Advocate
for the respondents.

RAMESHWAR SINGH MALIK J. (ORAL)

Defendants are in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for declaration and permanent injunction filed by the plaintiff was decreed by the learned trial court vide its impugned judgment and decree dated 12.11.2009 and first appeal of the defendants was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 9.10.2010, upholding the judgment of the learned trial court.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that respondent No.1/plaintiff filed a suit for declaration to the effect that notice dated 31.1.1996 was illegal, arbitrary, void and against the principles of natural justice. Consequential relief of permanent injunction, restraining appellants/defendants No. 1 and 2 from interfering into the possession of

RSA No. 2033 of 2011 (O&M)

respondent No.1/plaintiff in any manner in respect of House No. 170/A-170/B situated in Housing Board Colony, Ambala Cantt., was also sought. It was averred that the plaintiff and defendant No.3 were allotted House No. 170/A-170/B, Housing Board Colony, Ambala Cantt. on free holding basis. It was averred that the suit property was purchased in an auction for a fixed price of ₹3,03,500/-. The plaintiff and defendant No.3 paid a sum of ₹2,50,000/- to defendants No.1 and 2 towards the price of the said house and a small amount remained to be paid which the plaintiff and defendant No.3 could not pay due to financial crisis faced by them.

It was averred that the appellants/defendants No.1 and 2 issued resumption order dated 13.6.1988 and letters dated 18.8.1993 and 15.9.1993 to take physical possession of the said house forcibly from the plaintiff and defendant No.3. It was averred that aggrieved with the order dated 13.6.1988 and letters dated 18.8.1993 and 15.9.1993, the plaintiff filed a suit for declaration challenging the said order and letters with consequential relief of injunction. It was averred that during the pendency of that civil suit, plaintiff made the entire payment in terms of instalment. The details of installments were given. It was averred that defendant No.1-Gian Chand Sharma, Estate Manager, Housing Board Ambala City, appeared and filed his affidavit Ex.DW1/A on 10.12.2005 in which it was admitted that the plaintiff had paid the entire amount of installments and nothing remained due against the plaintiff and the proceedings to take physical possession of the house in question was abandoned. On the statement of defendant No.1, the court of Mrs. Ranjana Aggarwal, dismissed the suit of the plaintiff vide judgment and decree dated 18.1.2006 being infructuous. Aggrieved against the judgment and decree dated 18.1.2006, the plaintiff preferred an appeal

RSA No. 2033 of 2011 (O&M)

3

that instead of dismissing the suit as having been rendered infructuous, the same should have been decreed as the plaintiff had made the payment of entire amount. It was averred that the said appeal was allowed by Shri L.N. Jindal, the then learned Additional District Judge, Ambala, vide judgment and decree dated 3.4.2006. It was averred that the notice dated 31.1.1996 was served during the pendency of the suit with malafide intention to subvert the judicial process. The notice was also challenged on various grounds.

Having been put to notice, defendants No.1 and 2 appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. Since defendant No.3 was only a proforma party, he did not contest the suit. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled to relief of declaration?
OPP
2. Whether the suit is barred by principle of res-judicata?
OPP
3. Whether suit is barred by limitation?OPD
4. Whether the civil court has no jurisdiction to entertain and try the present suit?OPD
5. Whether the plaintiff is estopped from filing present suit?OPD
6. Whether the suit is not maintainable in present form?
OPD
7. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has duly proved his case, by bringing on record cogent and convincing evidence. Accordingly, his suit for declaration and

RSA No. 2033 of 2011 (O&M)

permanent injunction to the effect that notice dated 31.1.1996 issued by defendant No.1 and 2 was illegal and arbitrary, was decreed by the learned trial court, vide its impugned judgment and decree dated 12.11.2009. Feeling aggrieved, defendants filed their first appeal, which was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 9.10.2010. Hence this regular second appeal at the hands of unsuccessful defendants..

Heard learned counsel for the parties.

It is a matter of record and not in dispute that plaintiff-respondent filed an earlier suit against the defendants. Said suit was decreed by the learned first appellate court. Defendants approached this Court by way of **RSA No. 3216 of 2006 (Housing Board, Haryana and another Vs. Vijesh Kumar and another)**, which came to be dismissed by this Court, vide order dated 14.9.2007. Relevant part of the said order reads as under:-

“The only contention raised by the learned counsel for the appellants was that in view of the statement made by DW-1, i.e. witness of the appellants to the effect that no action was being taken as the impugned order was not to be implemented in view of the fact that the plaintiff-respondent had made the complete payment.”

Once the abovesaid order dated 14.9.2007 passed by this Court had attained finality between the parties. The argument sought to be raised by the learned counsel for the appellants that plaintiff did not make complete payment, is not available to them as on date. It is so said because it was specifically deposed by DW1 in the earlier round of the litigation that plaintiff-respondent had made complete payment. Having said that, this Court feels no hesitation to conclude that the learned courts below were well

RSA No. 2033 of 2011 (O&M)

within their jurisdiction in passing their respective impugned judgments and decrees and the same deserve to be upheld.

In fact, the earlier round of litigation which concluded in favour the plaintiff-respondent proved to be a clincher against the appellants-defendants in this round of litigation. It is an undisputed fact that the defendants did not challenge the abovesaid order dated 14.9.2007 passed by this Court any further. Once they have accepted the statement suffered by DW-1 in the earlier round of litigation to be correct, the defendants had no case either on facts or in law right from the day one and they were bound to fail. Under these undisputed facts and circumstances of the case, it can be safely concluded that learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

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

“After hearing learned counsel for the parties and going through the record of the case, this Court is of the opinion that there is no infirmity of illegality in the findings returned by the learned trial court on issue No.1. It is an admitted fact that earlier also the respondent/plaintiff fled a suit against the eviction order dated 13.6.1998 and orders dated 18.8.1993 and 15.9.1993. The suit was dismissed on 18.1.2006. An appeal was preferred by the respondent/plaintiff which was accepted by the court of Shri. L.N. Jindal, the then learned Additional

RSA No. 2033 of 2011 (O&M)

6

District Judge, Ambala, vide judgment and decree dated 3.4.2006. It is also an admitted fact that an appeal was filed by the appellants/defendants against the judgment and decree passed in appeal which was dismissed by the Hon'ble High Court in limini. In so far as the present notice dated 31.1.1996 is concerned, the same was not in issue before the learned trial court since the same had been issued during the pendency of the suit. DW2 S.S. Gill has admitted in his cross-examination that the respondent/plaintiff had been threatened only after the acceptance of appeal by the court of Shr. L.N. Jindal, learned Additional District Judge, Ambala. Further, DW1 Gian Chand who had appeared in the earlier suit had stated that the entire payment had been made by the respondent./plaintiff. The respondent/plaintiff could definitely have challenged that notice now under challenge had he acquired the knowledge of the issuance of the same at that point of time. No evidence was led by the appellants/defendants to prove as to what amount was due against the respondent/plaintiff. It is not understood as to when once a finding had been given that the amount stood paid then what value this notice had. Even otherwise, no action was taken on the notice dated 31.1.1996 till the year 2006. The reason apparently was that the appeal filed by the respondent/plaintiff had been accepted on 3.4.2006. The notice is also totally non-speaking and does not disclose any reason for eviction. The learned trial court, therefore, rightly declared the same to be void, in-operative and ineffective”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the

RSA No. 2033 of 2011 (O&M)

Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. 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 present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

6.9.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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