

RSA No. 2282 of 2012 (O&M)
RSA No. 1860 of 2012 (O&M)

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

RSA No. 1860 of 2012 (O&M)
Date of Decision: 11.10.2017

Bishan Dass

.....Appellant

Vs.

Municipal Council, Rewari and others

.....Respondents

2)

RSA No. 2282 of 2012 (O&M)

Bishan Dass

.....Appellant

Vs.

Ravi Dutt @ Ravi Kant

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. N.S. Shekhawat, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

These two regular second appeals are being decided together vide this common order, as the issues involved in both these matters are identical. Since decision of RSA No. 2282 of 2012, shall be dependent on the result of RSA No. 1860 of 2012, it would be appropriate to cull out facts from RSA No. 1860 of 2012, for the facility of reference.

Unsuccessful plaintiff is 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

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plaintiffs, was dismissed by the learned trial Court vide its impugned judgment and decree dated 21.7.2008 and first appeal filed by plaintiff No.1-Bishan Dass-appellant herein, was also dismissed by the learned first appellate Court vide impugned judgment and decree dated 22.2.2012, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by learned first appellate court in para 2 of its impugned judgment, are that suit for declaration and permanent injunction was brought by the plaintiffs, inter alia, pleaded therein that they were coming as owners in possession of a plot comprised in khewat No.245 khatoni No.356 khasra No.311 measuring 3 kanals 9 marlas to the extent of 4/69 share i.e. 4 marlas, as described and detailed in para No.1 and shown by letters ABCD in red colour in the site plan attached with the plaint, by virtue of a registered sale deed dated 16.02.1996. According to the plaintiffs, they had submitted a proposed site plan in the office of the defendant No.1-Municipal Council, Rewari, but the same was rejected by it on 16.5.1996. Later on, the plaintiffs preferred an appeal but their appeal was also dismissed by the Deputy Commissioner, Rewari, vide his order dated 10.9.1997. Thereafter, the aforesaid order passed by the Deputy Commissioner, Rewari was challenged before Commissioner and Secretary to Government Haryana, Chandigarh, by way of filing a revision, but the revision so filed by the plaintiffs was also dismissed on 27.1.1999.

The aforesaid orders of Municipal Council, Rewari as well as Deputy Commissioner, Rewari and Commissioner and Secretary to Government Haryana, Chandigarh were stated to be illegal, null and void and not binding on the rights of the plaintiffs on various grounds, as set out

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in para No.2(A) to 2(F) of the plaint. It was further averred by the plaintiffs that the aforesaid khasra No.311 was declared to be a private property in various cases by the civil court, therefore, the Municipal Council, Rewari was not competent to reject their building plan. The plaintiffs also served a notice dated 11.10.1999 under Section 52 of the Haryana Municipal Act, 1973 through their counsel Smt. Neeru Arora Advocate, but the defendants did not reply thereto. The plaintiffs asked the defendants several times to sanction their building plan after withdrawing their orders dated 16.5.1996, 10.9.1997 and 27.1.1999, but they continued to postpone the matter on one pretext or the other and finally refused to accede to the requests of the plaintiffs on 20.12.1999.

Having been put to notice, defendants appeared and filed their contesting written statement raising more than one preliminary objections. Suit land was claimed to be gair mumkin rasta, which could not have been sold to the plaintiffs by their vendor-Smt. Usha Devi. Revenue record was still in favour of the defendants. Plaintiffs filed their replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the impugned orders dated 16.2.1996, 10.9.1997 and 27.1.1999 passed by Municipal Council, Rewari, Deputy Commissioner, Rewari, Commissioner and Secretary Government of Haryana are illegal, null and void? OPP
2. Whether the suit is not maintainable in the present form?
3. Whether the plaintiff has no right to file the suit? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the plaintiff is estopped by his act and conduct to file the suit? OPD

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6. Relief.

In order to prove 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, learned trial court came to the conclusion that the plaintiffs have failed to prove their case for want of cogent and sufficient evidence. Accordingly, their suit for declaration and permanent injunction was dismissed by the learned trial court vide its impugned judgment and decree dated 21.7.2008.

Plaintiff No.1 felt aggrieved and filed his first appeal impleading plaintiff No.2 as proforma respondent. Learned first appellate court, after appreciation of the factual as well as legal aspects of the matter, including the evidence available on record, dismissed the first appeal, vide its impugned judgment and decree 22.2.2012. Hence this regular second appeal at the hands of unsuccessful plaintiff No.1. Plaintiff No.2 again has been impleaded as proforma respondent No.3.

It seems that after dismissal of their suit for declaration and permanent injunction by the learned trial court vide its abovesaid impugned judgment and decree dated 21.7.2008, both the plaintiffs fell apart and started fighting with each other. Plaintiff-appellant Bishan Dass filed another suit for possession by way of partition against his earlier co-plaintiff-Ravi Dutt. His said suit for partition was also dismissed by the learned trial court, vide its impugned judgment and decree dated 22.10.2009. However, his first appeal was partly allowed by the learned first appellate court vide its judgment and decree dated 28.11.2011, declaring him owner to the extent of one half share. Plaintiff-Bishan Dass still felt aggrieved and

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filed RSA No. 2282 of 2012 against his earlier co-plaintiff-Ravi Dutt. That is how, both these appeals came to be filed by the same plaintiff.

Heard learned counsel for the appellant in both these appeals.

It is a matter of record that land measuring 3 kanals 19 marlas under khasra No. 311 khatoni No. 356 khewat No. 245/186 for the year 1988-89 (Ex. P7), available at page No. 190 of the Lower Court Record ('LCR' for short), has been recorded as gair mumkin rasta. Entire case of the plaintiffs-appellant was based on this very jamabandi wherein their vendor-Smt. Usha Devi was recorded owner to the extent of 26/79 share but in khewat No. 95. Second plank of the case of the plaintiffs-appellant was that suit for permanent injunction filed by Sanjay Jain and others, including Smt. Usha Devi for permanent injunction by way of civil suit No. 803 of 1985 came to be decreed by the learned trial court vide its judgment and decree dated 29.1.1997 (Ex.P8), at page 191 of the LCR. However, on a close perusal of both these documents, it has become crystal clear that both these documents were being misread by the plaintiffs to their own suitability.

Truth will remain the truth. Our justice delivery system is based on truthfulness. Once Smt. Usha Devi-vendor of the plaintiffs was not the owner of suit land purchased by the plaintiffs, she would not be in a position to pass on any better title in favour of the plaintiffs. Further, even on the basis of civil court decree (Ex.P8), wherein title was not involved, that being a suit for permanent injunction, plaintiffs did not make any efforts to get the revenue record corrected, in case it was incorrect. In fact, plaintiffs-appellant had no case right from day one either on facts or in law. It is so said because gair mumkin rasta would never be the ownership of Smt. Usha

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Devi-vendor of the plaintiffs. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

It is also not in dispute that even after obtaining the decree for permanent injunction against the Municipal Committee vide Ex.P8, Smt. Usha Devi-vendor of the plaintiffs never filed any suit for declaration claiming her ownership over khasra No. 311 measuring 3 kanal 19 malra. Had Smt. Usha Devi acquired the ownership over khasra No. 311 and out of said ownership, she would have sold some part thereof in favour of the plaintiffs-appellants, fact situation would have been entirely different.

In fact, Smt. Usha Devi was well aware about this fact that suit land was never her ownership, having been recorded as gair mumkin rasta, which would always vest either with the Gram Panchayat or after extension of Municipal limits, with the Municipal Committee. In this view of the matter, it can be safely concluded that the learned courts below committed no error of law, while recording their concurrent findings of facts and the impugned judgments and decrees 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 8 of its impugned judgment, which deserve to be noticed here, read as under:-

Law is well settled that the plaintiff has to establish his own case independently and he could not take the benefit of

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weakness of the defence. For the said propositions of law, a useful reference may be made to PAL Singh and others Vs. Uma Mehta and others 1997(1) The Punjab Law Reporter 80. It is the specific case of the plaintiff that the suit property measuring 4 kanals, as delineated by letters ABCD and shown in red colour in the site plan Ex.PW3/2, is part of khasra No.311 and the same was purchased by them, vide a registered sale deed dated 16.2.1996 Ex.PW/1 from Smt. Usha Devi d/o Nemi Chand, residen tof Circular Road, Rewari and since then they have been coming as its owners in possession, but their proposed building plan Ex.P6 was wrongly rejected by the Municipal Council, Rewari, vide order dated 16.5.1996. In the copy of jamabandi for the year 1988-89 Ex.P7, the nature of Khasra No.311 (3-19) has been recorded in column No.8 as 'Gair Mumkin Rasta' ; meaning thereby that the aforesaid khasra number being situated within the municipal limits shall be deemed to have been vested in the Municipal Council, Rewari by virtue of the provisions of Section 61 of the Haryana Municipal Act, 1973. In this regard, the learned counsel appearing on behalf of the contesting respondents-defendants Mr. Dinesh Sharma Advocate has also drawn the attention of this Court to the photocopy of the register of the immovable property of Municipal Council, Rewari Ex.D6 whereby the khasra No.311 was declared as a public street. At this stage, it has also been pointed out by the learned counsel for the respondents that the property lying in the north of the suit property was jointly purchased by the plaintiffs from one Jhangi Ram, vide a registered sale deed dated 6.8.1981. Certified copies of the aforesaid sale deed and the site plan attached thereto have been produced on record by the respondents as Ex.R5 and Ex.R6 by way of additional evidence before this Court. A glance over the copies of the said sale deed and site plan would clearly reveal that in the south of the property so purchased by the plaintiffs from Jhangi Ram the

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suit property has been shown as rasta share-aam which fact, in itself, clearly substantiates the plea of the respondents-defendants that the suit property was being used as a public street. Therefore, the plaintiffs could not have acquired a valid title with regard to the suit property on the basis of the sale deed Ex.PW1/1 dated 16.2.1996 executed in their favour by Smt. Usha Devi. Besides this, it may also be noticed that the plaintiff No.1 Bishan Dass had also filed a Civil suit against plaintiff No.2 Ravi Kant for partition of their properties including the suit property which suit was dismissed by the learned Court of Shri Ishwar Dutt, Addl. Civil Judge (SD), Rewari on 22.10.2009, but the Appeal so filed against the aforesaid judgment by the appellant-plaintiff Bishan Dass was partly Allowed and specifically dismissing the claim of the plaintiff Bishan Dass qua the suit property holding therein that the suit property has been proved to be vested in Municipal Council, Rewari and the same is being used as Green Belt, vide judgment and decree dated 28.11.2011 passed by the learned Court of Shri J.R. Chauha, Addl. District Judge, Rewari, the certified copies of which have been placed on record by the contesting respondents by way of additional evidence before this court as Ex.R3 and Ex.R4. The above factual position could not be disputed even by the learned counsel appearing on behalf of the appellant-plaintiff Mr. Mukesh Gupta, Advocate. Therefore, the order of the defendant No.1-Municipal Council, Rewari dated 16.5.1996 rejecting the proposed building plan of the plaintiffs in respect of the suit property as well as the order dated 10.9.1997 of the Deputy Commissioner, Rewari affirming the aforesaid order of Municipal Council, Rewari cannot be said to be illegal, null and void, as being claimed by the plaintiffs in the present suit. As such, the findings of the learned trial Court being based on cogent reasoning are not liable to be interfered with by this court in exercise of its appellate jurisdiction.”

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In view of the abovesaid peculiar facts and circumstances of the case, plaintiff-appellant cannot claim himself to be a bonafide purchaser. It is so said because the suit land was clearly recorded as gair mumkin rasta. Such a land could neither have been sold by anybody, including Smt. Usha Devi, nor could have been purchased by anybody, including plaintiffs. Under these circumstances of the case, principle of *Caveat Emptor* would apply against the appellant and principle of *Nemo dat quod non habet* would apply to Usha Devi-vendor of the plaintiff. Had the appellant been a bonafide purchaser, he would have sought correction in the revenue record, however, he did not do so for the reasons best known to him, for which he cannot claim any kind of benefit. Under these undisputed facts and circumstances of the case, no fault can be found with the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Coming to the second appeal, learned counsel for the appellant has fairly conceded that result of this appeal would depend on the result of RSA No. 1860 of 2012 and rightly so, it being a matter of record. However, as an abundant precaution, it is recorded that once neither the plaintiffs nor the defendants were owners of any part of the suit land involved in second suit No. 111 of 2006, in view of the reasons recorded in the foregoing paragraphs, no benefit of any kind, whatsoever, can be conferred on the plaintiff-Bishan Dass.

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments and decrees passed by the learned courts below. He

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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 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 both these appeals are misconceived, bereft of merit and without any substance. Thus, these must fail. No case for interference has been made out.

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

11.10.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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