

RSA No. 276 of 2016 (O&M)
RSA No. 1953 of 2016 (O&M)

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

RSA No. 276 of 2016 (O&M)
Date of Decision: 27.7.2017

Shanti Van (Registered Society), Kaithal, and others

.....Appellants

Vs.

Municipal Council, Kaithal

.....Respondent

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Shanti Van (Registered Society), Kaithal, and others

.....Appellants

Vs.

Municipal Council, Kaithal

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

These two identical regular second appeals, at the hands of plaintiffs, are directed against the concurrent findings of facts recorded by both the learned courts below in their respective impugned judgments. Since both these appeals are arising out of similar set of facts and between same parties, covering the same suit property, these are being decided together vide this common order. However, for the facility of reference,

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facts are being culled out from RSA No. 276 of 2016.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that the plaintiff No.1, i.e. registered society, was constituted with the object of carrying out the social activities mainly to maintain and improve the conditions at cremation ground and to help and assist people to cremate the dead bodies of the persons dying issue-less or penniless. The land measuring 83K-0M (Gair Mumkin Chhalle), fully detailed in para no.4 of the plaint, was a cremation ground where the dead bodies of the adult persons having faith in Hindu religion were burnt in fire and this process was called cremation whereas the dead bodies of the children of Hindu religion are buried under earth. Besides this, so many other ceremonies were performed among Hindus, which took place up till 13th or 17th day of death, which were also performed at cremation ground. The suit land was being used for cremating the dead bodies by 80% inhabitants of Kaithal City which was orally dedicated/donated by its previous owners in favour of general public of Kaithal long time ago, which was further corroborated from the entries contained in the revenue record wherein in the column of possession in jamabandi entries were continuing in the name of general public and nature of the land was shown as gair mumkin chhalle i.e. cremation grounds.

The general public of Kaithal was in possession of the suit land and nobody including previous owners ever raised any objection regarding using the suit land as cremation ground. Extensive construction on the suit land was also made by plaintiff No.1. On 30.4.1969, some of the inhabitants of Kaithal City made an application to the Administrator, Municipal Committee, Kaithal, for developing the suit land as cremation ground as the

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general public was facing inconvenience for cremating the dead bodies particularly in rainy season and after giving notice to public, the Municipal Committee, Kaithal, decided to develop the suit land vide its order dated 4.6.1969 and constructed an approach road as well as a boundary wall on the part of land and kept 53K-0M land for being used for upkeep and improvement of the remaining land. It was also decided to spend the income earned from 53K land for upkeep and development of the cremation ground but despite that, the defendant never remained serious towards its undertaking and never made any development work, as such, the inhabitants of the area collected funds from Kaithal City and raised the construction of a temple in the premises of cremation ground and raised construction of sheds, bathroom, Hawankund for performing funeral, and developed the park and also constructed the place for performing the ceremonies of Dasai, Uthala etc. and since then, it was plaintiff No.1 society which was carrying out the development work at cremation grounds and had carried out various development works by spending lakhs of rupees in the shape of Hall, sitting place, cemented chairs and shed etc.

The Municipal Authorities did not contribute any amount of money recently for the last more than 5-6 years towards the development of the suit land but was insisting to lease out the area of cremation ground which was kept for extension of the cremation ground. Defendant, illegally and unlawfully, tried to change the user of the suit land by raising the construction of a store on the suit land in the month of March, 2009 but its illegal attempt was foiled by the timely intervention of the plaintiff No.1 as well as by the inhabitants of Kaithal City and news regarding the same was also published in various newspapers. The plaintiff as well as inhabitants of

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Kaithal wanted to raise more construction in cremation ground for the purpose of further developing the same and also intend to develop a park as well as a Pooja Sathal on the whole suit land whereas defendant wanted to change the nature of the suit land by way of raising construction thereon for its own purposes unconnected with the activities of cremation and in order to stop the plaintiff from developing the suit land. Defendant also wanted to give the part of the suit land on lease, without having any right, title or interest in the suit land. Despite repeated requests, defendant refused to desist itself from its illegal act and design on 3.7.2009.

Defendant was put to notice and consequently, it filed its contesting written statement, raising more than one preliminary objections. Plaintiffs filed their replication. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether plaintiff No.1 is registered Society which is running the affairs of the suit land measuring 83K-0M and the defendants are liable to be restrained from raising any type of construction subservient and connected with the cremation activities? OPP.
2. Whether on the ground mentioned in plaint, the defendants are liable to be restrained from stopping the plaintiffs from carrying out development extension work of the suit land or giving it on lease to anybody in any manner? OPP
3. Whether the suit is liable to be dismissed for non-serving of notice under Haryana Municipal Act? OPD.
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiff has no locus standi to file the present suit? OPD
6. Whether the suit is bad for non joinder and mis joinder of necessary parties? OPD

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7. Whether the suit is liable to be dismissed on account of concealment of true and material facts from the Court as alleged in para No.5 of the preliminary objections?
OPD

8. Relief.

With a view to substantiate their respective stands taken in their pleadings, voluminous evidence, documentary as well as oral, was brought on record by both the parties. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that suit of the plaintiffs deserved to be partly decreed. Accordingly, suit for permanent injunction filed by the plaintiffs-appellants was partly decreed by the learned trial court vide impugned judgment and decree dated 2.7.2013.

Feeling aggrieved, defendant-Municipal Council filed its first appeal whereas plaintiffs filed their cross-objections under Order 41 Rule 22 of the Code of Civil Procedure, challenging the findings recorded by learned trial court on issues No.1 and 2. First appeal of the defendant was partly accepted, however, cross objections filed by the plaintiffs were dismissed by the learned first appellate court vide its impugned judgment and decree dated 25.8.2015. Hence these two regular second appeals at the hands of plaintiffs.

Heard learned counsel for the appellants.

Instant avoidable and unwarranted litigation seems to be the outcome of tussle of ego between plaintiffs and defendant-Municipal Council. It is the second round of litigation between the parties. Earlier judgments dated 20.11.1984 (Ex.D-1) and 20.9.1987 (Ex.D3) are available on record. An ill founded apprehension of the plaintiffs was that respondent-Municipal Council was raising some construction on the land earmarked for

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cremation ground for deriving income therefrom, without intending to spend anything on the upkeep and maintenance of the cremation ground. Plaintiffs were not claiming ownership of the suit land which was in the form of cremation ground.

On the other hand, case set up by the defendant-Municipal Council was that since the area of cremation ground was measuring 83 kanals 6 marlas, Municipal Council was intending to raise construction only on that portion which was spare and was not being used for the purpose of cremation activities. It was also pleaded on behalf of the respondent that whatever income would be derived, the same shall be spent only for upkeep and maintenance of the cremation ground and not for any other purpose.

Since the learned trial court, while partly decreeing the suit of the plaintiffs, restrained the respondent-Municipal Council from raising any type of construction over the suit land which was not subservient or connected with the cremation activities, the learned first appellate court rightly accepted the first appeal of the respondent-Municipal Council partly and dismissed the cross-objections of the appellants-plaintiffs. Relevant operative part in para 21 of the judgment of learned first appellate court is very much clear in this regard. Thus, impugned judgment and decree dated 25.8.2015 deserve to be upheld.

A combined reading of both the impugned judgments and decrees would make it crystal clear that appellants were trying to rake up the wholly unwarranted issues, which were not even existing or available to the plaintiffs. In fact, it were the plaintiffs who were wanting to take control of the cremation ground, despite it being an undisputed fact that plaintiffs were not owners of the suit land. In this view of the matter, the learned courts

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below and particularly, learned first appellate court, rightly arrived at a just conclusion, adopting the middle path and the impugned judgments and decrees passed by the learned courts below 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 18 to 21 of its impugned judgment, which deserve to be noticed here, read as under:-

“The plaintiff society or any member of the public could have approached the court if it had any apprehension of mis-utilization of the land by the defendant Municipal Council. It is true that the defendant Municipal Council is a public body which works through the elected representatives of the persons i.e. Municipal Councilors and they work after passing the resolutions. Even by passing the resolutions, the defendant Municipal Council cannot be permitted to do any activity which is not in furtherance of the intentions of the original owners i.e. the donors of the land in question. As is clear from the judgments Ex.D1 and Ex.D3 dated 30.11.1984 and 26.09.1987 respectively, the location of the land is not disputed. Even the ld. counsel for the plaintiff's society has not disputed its location in this court. The grudge of defendant Municipal Council is that if the construction is permitted only for cremation and its subservient purposes, then no income shall be derived for maintenance and upkeep of the cremation ground. The apprehension of the plaintiff society that in case the permanent structures are raised over the remaining

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portion of the land, then there shall be no scope for extension of the cremation ground, is also not without any basis.

In such circumstances, the interest of justice demands that the activities of the defendant Municipal Council should not cause any adverse effect on the upkeep and maintenance of the cremation ground or these should not be carried out in such a manner so that there is no scope left for extension of the cremation ground in future. The purpose of construction by the defendant Municipal Council should be to derive income for upkeep and maintenance of the cremation ground. The interest of justice demands that whenever any construction activities or the activity for deriving out the income for upkeep and maintenance of cremation ground are carried out, then it should be in consonance with the spirit of the previous decisions vide judgments Ex.D1 and Ex.D3.

As it is the case of the defendant Municipal Council that now the land has become non fertile, so no agriculturist is taking the same on lease after the year 2008 and if the commercial activities are not permitted on the remaining land, then the income for maintenance of the cremation ground shall not be there. In such circumstances, the interest of justice demands that a balance should be struck so that the scope of extension of the cremation ground is left and the defendant Municipal Council is able to derive income out of this property for upkeep and maintenance of the cremation ground. Accordingly, it is ordered that the defendant Municipal Council shall derive the income of the remaining 63K land by doing such activities on it which may be appropriate and in tune to the developments. Firstly, it can utilize the 10K land which is bifurcated by the road passing through this land and the remaining

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portion can be given on lease etc. as an open ground. However, if ultimately some construction activities are to be carried out over the remaining portion of the land for deriving the income, then it should not exceed 25% of the total land measuring 83K-18M.

Accordingly, the appeal of the defendant Municipal Council is accepted partly and the cross objections of the plaintiff society are dismissed. In view of facts and circumstances of the present case, there shall be no order as to costs. The defendant Municipal Council is authorized to do any other activity, other than the activities subservient to the cremation activities, also over the vacant land to derive the income for upkeep and maintenance of the cremation ground. However, it shall not raise the permanent structure for this purpose on the area in excess to 25% of the total land. It is also ordered that the defendant Municipal Council shall ensure that the income derived out of these activities is utilized for upkeep, maintenance and extensions etc. of the cremation ground only and not for any other purpose....”

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 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.

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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 both the 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.

27.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

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