

RSA No. 1528 of 2015 (O&M)
RSA No. 3012 of 2015 (O&M)

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

RSA No. 1528 of 2015 (O&M)
Date of Decision: 28.3.2017

Pawan Kumar

.....Appellant

Vs.

State of Haryana and others

.....Respondents

2.

RSA No. 3012 of 2015 (O&M)

Amar Nath and another

.....Appellants

Vs.

State of Hayana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Kamal Sharma, Advocate
for the appellant in RSA No. 1528 of 2015.

Mr. Saurabh Garg, Advocate
for the appellants in RSA No. 3012 of 2015.

RAMESHWAR SINGH MALIK J. (ORAL)

These two identical regular second appeals bearing RSA Nos. 1528 and 3012 of 2015, are being decided together vide this common order, with the consent of learned counsel for the parties, as both these appeals are arising out of similar set of facts and are directed against the same impugned judgments and decrees. However, for the facility of reference, facts are being culled out from RSA No. 1528 of 2015.

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Feeling aggrieved against the impugned judgment and decree dated 9.9.2014 passed by the learned Additional District Judge, upholding the impugned judgment and decree dated 14.2.2013 of the learned trial court, dismissing their suit for permanent injunction, plaintiffs have approached this Court by way of these two regular second appeals.

Facts necessary for disposal of both these appeals, as noticed by the learned trial court in para 2 of its impugned judgment, are that four plots of land measuring 25x36 (100 sq. yards) shown in site plan Annexure-A, measuring 50x36 (100 s. yards) shown in the site plan Annexure-B, measuring 25x36 (100 sq. yards) was site plan Annexure-C, forming part of khasra No. 188, khewant No. 149, khatoni No. 249, according to jamabandi for the year 1999-2000 relating to Patti Gaddar Kaithal Tehsil and Distt. Kaithal was situated within the revenue estate of the aforesaid Patti and municipal limits of Kaithal, Municipal Kaithal. The suit property shown in site plan Annexure-A was owned and possessed by plaintiff No.1 vide registered sale deed No. 191/1 dated 17.4.1990, shown in site plan Annexure-B was owned and possessed by plaintiff No.2 vide registered sale deed No. 189/1 dated 17.4.1990, shown site plans Annexures-C and D were owned and possessed by plaintiff No.3 vide registered sale deed No. 190/1 dated 17.4.1990 and 1967/1 dated 9.6.1990 registered and attested in the office of S.R. Kaithal on the same day.

Plaintiffs purchased the suit property from Sh. Narender Singh son of Sh. Santokh Singh who was owner in possession of the same at the time of registration of sale deed in the favour of plaintiffs. In March 2009, Municipal Council, Kaithal, was threatening to lay down a sewerage pipe

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line through the suit property, illegally and unlawfully though it had no right, title or interest to do so and consequently, plaintiffs had to file civil suit No. 49/09 on 4.3.2009 Re: Amar Nath VS. M.C. Kaithal, for seeking, a restrain against M.C. Kaithal from interfering into the lawful and peaceful possession of the plaintiff over the suit property. In the said suit, vide order dated 9.3.2009, passed by Civil Judge (SD), Kaithal, the parties to the suit were directed to maintain status quo regarding construction over the suit property. Now defendants No.3 and 4 in collusion with defendant No.1 and 2 were threatening to pass the electricity supply lines through the suit property illegally and unlawfully by installing pillars and stray wire in the suit property without having any sanctioned plan.

Defendants were served in the suit. They appeared and filed their separate written statements, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial court framed the following issues:-

- 1) Whether the plaintiffs are entitled to a decree of mandatory injunction, as prayed for?OPP
- 2) Whether the plaintiff are entitled to a decree for permanent injunction, as prayed for?OPP
- 3) Whether the suit of the plaintiffs is not maintainable? OPD
- 4) Whether the suit is bad for misjoinder for parties?OPD
- 5) Whether the plaintiffs have no cause of action and locus standi to file the present suit? OPD
- 6) Relief.

With a view to substantiate their respective pleaded cases, both the parties produced their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence

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brought on record, learned trial court came to the conclusion that plaintiffs have failed to prove their case. Accordingly, suit was dismissed vide impugned judgment and decree dated 14.2.2013. Dissatisfied, plaintiffs filed their first appeals, which also came to be dismissed by the learned Additional District Judge, vide common impugned judgment and decree dated 9.9.2014. Hence these two regular second appeals at the hands of plaintiffs.

Heard learned counsel for the appellants.

Placing reliance on judgment of the Hon'ble Supreme Court in **M. Naga Venkata Lakshmi Vs. Viskhapatnam Municipal Corp. and another, 2007 (8) SCC 748** and judgment of this Court in **Sadhu Singh and others Vs. Thakardawara Bhagwant Narainji, 2007 (5) RCR (civil) 287**, learned counsel for the appellants jointly submit that the learned courts below have failed to appreciate true facts of the case as well as evidence available on record in correct perspective, because of which the impugned judgments and decrees are not sustainable in law. They further contended that even if the construction had been completed by the defendants during pendency of the suit, learned courts below ought to have moulded the relief and suit of the plaintiffs-appellants ought to have been decreed. They pray for setting aside the impugned judgments and decrees, by allowing both these appeals.

Having heard the learned counsel for the appellants at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that both these appeals are without any merit and

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impugned judgments and decrees passed by the learned courts below, recording their concurrent findings of facts, deserve to be upheld. To say so, reasons are more than one, which are being recorded hereinafter.

Learned counsel for the appellants, during the course of hearing, could not controvert this material fact that when their application under Order 39 Rule 1 and 2 of the Code of Civil Procedure ('CPC' for short), was dismissed by the learned trial court and their miscellaneous appeal was also dismissed by the learned first appellate court, coupled with the next material fact that official respondents completed the construction work of concrete cement road and also the work of laying down the sewerage pipeline over the disputed property, as reflected in the report of Local Commissioner, plaintiffs-appellants did not seek any amendment in their plaint. When confronted with this crucial aspect of the matter, learned counsel for the appellants had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

So far as the judgments relied upon by learned counsel for the appellants are concerned, there is no dispute about the law laid down and observations made therein. However, on a close perusal of the cited judgments, the same have not been found to be of any help to the appellants, being distinguishable on facts. In fact judgment in M. Naga Venkata Lakshmi's case (supra) goes clearly against the appellants.

It is the settled principle of law that peculiar facts of each case

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are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

Further, learned counsel for the appellants could not point out any prejudice which was likely to be caused to the plaintiffs-appellants by laying down the sewerage pipeline by the official defendant-respondents, particularly when the appellants would also be beneficiaries thereof. Authority of defendants-official respondents to lay down the sewerage pipeline has not been disputed by the learned counsel for the appellants. Under these undisputed facts and circumstances of the cases in hand, it can be safely concluded that learned courts below committed no error of law, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court, as well as different High Courts, including this Court:-

- 1) J.J. Lal Pvt. Ltd. Vs. M. R. Murali, 2002 (3) SCC 98 (SC)
- 2) M. Naga Venkata Lakshmi Vs. Viskhapatnam Municipal Corp. and another, 2007 (8) SCC 748
- 3) Bhagwan Dass and others Vs. Surinder Kumar and another, 1988 (2) PLR 179 (P&H)

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4) Dr. Mohan Lal Vs. Haryana State Electricity Board, Chandigarh and others, 1989 (2) PLR 380 (P&H)

5) Ballabgarh Co-op. Marketing Society Vs. Haryana Co-op, Supply and Marketing Federation, 2012 (5) RCR (civil) 754 (P&H)

6) Om Parkash Vs. Line In-charge, Amit Kumar and others, 2014 (36) RCR (civil) 936 (P&H)

7) Gangadeen Vs. State of M.P. and others, 2003 (1) RCR (civil) 503 (MP HC)

Before arriving at a just conclusion, learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Cogent findings recorded by the learned Additional District Judge in para 24 to 28 of his impugned judgment, which deserve to be noticed here, read as under:-

“In view of the above discussion and after careful perusal of the record, this court is of the considered opinion that in this case, the appellants-plaintiffs have made hotchpotch of the things and have mixed up the cause of actions as well as the parties. The respondents-defendants no.1 and 2 and respondents-defendants no.3 and 4 are distinct identities whereas respondents-defendants no.5 to 8 are private persons. The cause of action against all of them are different. What was the matter between the appellants-plaintiffs and the Municipal Council has not been clarified. When the Local Commissioner's report was given, then why the appellants-plaintiffs did not amend the plaint, is not clarified. Even in the report of Local Commissioner dated 04.09.2009, it is mentioned that at that time, the construction of concrete cement road was going over some part of the disputed property. Here itself this court wants to mention that the Local Commissioner has taken

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whole of the property between the house of respondents-defendants no.5 to 8 and Bidquar lake as disputed property whereas it is not the case. The arguments are being advanced on behalf of appellants-plaintiffs that the sewerage pipe lines have been laid over the disputed property whereas as reflected in the report of Local Commissioner, the sewerage from West to East was found running by him underneath the disputed property.

25. It has rightly been argued by the learned GP for respondents defendants no.1 and 2 and learned counsel for respondents-defendants no.3 and 4 that the demarcation through some revenue expert was a must and from that demarcation only, it could have been ascertained by the court whether the construction work or the sewerage work has to be done or was to be done over the property allegedly of appellants-plaintiffs or not. Ld. Counsel for the appellants-plaintiffs has argued that as there was no dispute about the ownership of the property of appellants-plaintiffs and at the time of visiting the spot by Local Commissioner, both the parties were present but from the side of respondents-defendants, no person admitted the ownership of appellants/plaintiffs over that portion of the land over which the construction work was going on or over which the sewerage pipe lines have been laid.

26. If the contentions of the appellants-plaintiffs that the possession of the disputed property has been taken wrongly by them, is taken into consideration, then the appellants-plaintiffs should have instituted the suit for possession and merely by way of mandate, the respondents-defendants cannot be ordered to hand over the possession to the appellants-plaintiffs qua their alleged ownership property. The appellants-plaintiffs, if were of the opinion that the possession of the land of

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their ownership has been taken wrongly by the respondents-defendants, should have filed the appropriate suit for possession or should have claimed the compensation of that land. The rulings as relied upon by the learned counsel for the appellants-plaintiffs have no applicability to the facts and circumstances of the case.

27. Though, it is not proved, even from the report of Local Commissioner, that any stray line or the electric pole has been installed by the respondents-defendants no.3 and 4 over the property of ownership of appellants-plaintiffs, yet even if they would have done so, then also, as per the Electricity Act, 2003, they had the authority to do so. The appellants-plaintiffs cannot take advantage of the fact that in doing so, they have not followed some procedural aspects strictly.

28. The appellants-plaintiffs, who are allegedly owners of the disputed property, should have taken care of that due to their property no disturbance was being caused to the neighbourhood or to the Bidquar lake, which is admittedly a place of ancient glory but they failed to take care of it and when the respondents-defendants no.1 and 2 had taken care of it, then they have come to the court that it is their property in which interference is being caused and respondents-defendants no.1 and 2 laid down the sewerage pipe line. Instead of filing this suit they should have moved to the respondents-defendants themselves that the property belong to them and sewerage pipe line should not be laid through their property but straightway they approached the court, that too, without serving notice under Section 80 CPC upon the officials of respondents-defendants.”

During the course of hearing, learned counsel for the appellants

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failed to point out any patent illegality or perversity in either of the impugned judgments rendered 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 judgments of 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 second appeals stand dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

28.3.2017
Ak Sharma

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