

106.

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

RSA-4348-2016 (O&M)

Date of decision: 05.05.2017

Arun Kumar

.... Appellant

Versus

Municipal Town Planner and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. K.S. Rekhi, Advocate,
for the appellant.

HARI PAL VERMA, J.

The appellant-plaintiff has filed the present Regular Second Appeal against the judgment and decree dated 10.05.2016, passed by learned Additional District Judge, Amritsar, whereby his appeal against the judgment and decree dated 06.12.2013 passed by learned Civil Judge (Junior Division), Amritsar, was dismissed.

Briefly stated, the appellant-plaintiff (herein referred as 'plaintiff') had filed a suit for permanent injunction restraining the respondents-defendants (herein referred as 'defendants') and their agents and office bearers from interfering in the peaceful, legal and continuous possession of the plaintiff over two rooms, one veranda, one kitchen, one bathroom on the first floor and one room and one kitchen on the second floor of House No.2523/6, Bazar Gujran Wala

demolishing and damaging the said premises illegally and forcibly. As per the plaint, the father of the plaintiff took the said premises on rent from one Muni Lal i.e. grandfather of defendant No.2 @ ₹20/- per month about 45 years back. After the death of plaintiff's father, plaintiff became tenant over the premises in question under defendant No.2, who also became landlord after the death of his grandfather and father. Accepting defendant No.2 as his landlord, plaintiff has been paying rent @ ₹20/- per month. Plaintiff is in possession of 1st and 2nd floor of the house, whereas defendant No.2 has his shop on the ground floor of the house, which shows that the building is fit for human habitation and business. About one year back, defendant No.2 threatened the plaintiff that he will demolish the building as he wants to construct a new showroom in place of the existing building. Defendant No.1-Municipal Town Planner in connivance with defendant No.2, without inspecting the building, issued a notice dated 22.09.2011 to the plaintiff for the demolition of said building, as the same is not fit for human habitation. Defendant No.2 also issued legal notice dated 19.09.2011 to the plaintiff stating that the building can collapse at any time, though defendant No.2 is still carrying on his business on the ground floor of the said house. Plaintiff is residing in that house with his family. It is fit for human habitation. The building is not as old and there are no cracks in the walls and in the roofs. The defendants have no right to interfere in the peaceful, legal and continuous possession of the plaintiff and to demolish the same illegally and forcibly. Hence, the suit was filed.

On notice, defendant No.2 appeared and filed written statement, stating that the plaintiff is a tenant in the suit property. The suit property is unfit and unsafe for human habitation. The roof of the building is in a dilapidated condition and can fall at any time. There are huge cracks in the walls and the wooden walls had also got cracks. The walls are bending and can fall at any “moment”. The same can also cause physical loss to the passersby and also to the persons who are living in adjoining the property. The plaintiff was requested to vacate the premises, so that the same can be demolished, but instead, the plaintiff instituted the present suit with an attempt to stop the legal proceedings initiated by defendant No.1. It has been denied that defendant No.2 wants to construct a new showroom in place of the existing house. In fact, defendant No.2 who is the owner of the suit property has received a notice from defendant No.1. The adjoining building owned by Krishan Kumar Bhatia also received notice from defendant No.1 as the property is in a totally dilapidated condition. The notice issued by defendant No.1 is based on the actual position at the spot and the defendant No.1 being a lawful body appointed under the law has got every right to initiate the proceedings under the Municipal Corporation Act. The house is more than 100 years old and is built up with Nanakshahi bricks.

Defendant No.1 also appeared and filed written statement stating that since the relief claimed in the present suit is in the nature of declaration in favour of the plaintiff, as such, notice under Section 396

of the Punjab Municipal Corporation Act, 1976 was mandatory to be served before filing the suit, but no such notice has ever been served on the defendant No.1. Thus, the suit is bad for want of notice. It is denied that the building is fit for human habitation. Taking into consideration the dilapidated condition of the building, a notice i.e. MTP No.1000 dated 22.09.2011 was served upon the owner as well as occupants of the building to get it repaired or to demolish the same. But instead of complying the said notice, the plaintiff has rushed to the court.

After going through the evidence on record, the trial Court held that admittedly the building is built up with Nanak Shahi bricks and is a very old building. There are cracks in the building and it needs repair. A notice i.e. MTP No.1000 dated 22.09.2011 was served upon the owner as well as the occupants of the building to get it repaired or to demolish the same. The plaintiff did not prefer an appeal against the said notice. A notice was also served on the owner of adjoining building, which was found in dilapidated condition by the defendant-Corporation. DW2-Michel, who is the Building Inspector, has deposed that during the routine checking by the staff of MTP department and has found that the building is in a dangerous and dilapidated condition. Its roofs have become very weak and are in a broken condition, big cracks have developed in the wall of the disputed building and ballis and further, wooden sahatirs used in the construction of the building are also in a shabby and broken condition and its walls have sagged

down. Therefore, the building can collapse at any moment causing great loss to the human lives living/working in the building as well as to the passersby of the building. Accordingly, the trial Court vide judgment and decree dated 06.12.2013 dismissed the suit.

Aggrieved against the aforesaid judgment and decree dated 06.12.2013 passed by the trial Court, the plaintiff filed an appeal, which was also dismissed by the Lower Appellate Court vide judgment and decree dated 10.05.2016.

It is in the aforesaid circumstances, the plaintiff (appellant herein) has filed the present Regular Second Appeal.

Learned counsel for the appellant-plaintiff has argued that the plaintiff is residing at 1st and 2nd floor of the building and respondent-defendant No.2 is running a shop on ground floor, which fact itself is sufficient to prove that the building is quite fit and safe for human habitation. Respondent-defendant No.2 has already filed a petition under Section 13 of East Punjab Urban Rent Restriction Act, which is pending for disposal, but instead of waiting for the outcome of said petition, he (defendant No.2) in connivance with defendant No.1 has filed the present suit for eviction of the plaintiff.

I have heard learned counsel for the appellant.

Admittedly, respondent-defendant No.2 is the owner of the the building in question and the plaintiff is residing there at the 1st and 2nd floor of the building as a tenant with his own family. The said building was taken on rent by the father of the plaintiff from the

grandfather of defendant No.2 @ ₹20/- per month. It is the duty of the Municipal Corporation to check each and every building to ascertain the fact as to whether the same is fit for human habitation or not. On inspection, it was found that the said building is not fit for human habitation. Since the said building has become unsafe and unfit for human habitation, the Municipal Town Planner issued a notice dated 22.09.2011 to either repair the building or demolish the same, but the plaintiff instead of complying the notice, has filed the present suit. The building in dispute is admittedly built of nanak shahi bricks and its status as old building cannot be negated. It can collapse at any time. Even for the adjoining building which was in a dilapidated condition and not fit for human habitation, a notice was served upon its owner and the same was demolished. The Municipal Town Planner (defendant No.1) being a lawful body appointed under the law has every right to initiate proceedings under the Municipal Corporation Act.

Plaintiff has not availed the remedy available to him under the Municipal Corporation Act. Nothing has come on record that Municipal Corporation ever issued notice to the plaintiff at the asking of the defendant No.2. Merely because defendant No.2 has filed rent petition seeking eviction of the plaintiff, is no ground to the plaintiff to wait for the outcome of the rent petition. So, both the courts below have rightly dismissed the suit of the plaintiff.

No other point is argued.

No substantial question of law arises in the present regular second appeal.

In view of above, this Court does not find any reason to interfere with the findings of the courts below which are also based on concurrent findings of facts. Accordingly, the present Regular Second Appeal is dismissed.

(HARI PAL VERMA)
JUDGE

05.05.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No