

CM Nos. 15223-24-C-2016 in/and
RSA No. 5588 of 2015

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IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CM Nos. 15223-24-C-2016 in/and
RSA No. 5588 of 2015
Date of Decision: 18.03.2017

Dharambir

.....Appellant.

vs.

MC Rohtak and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sudhir Hooda, Advocate,
for the applicant-appellant.

AMOL RATTAN SINGH, J. (ORAL)

CM No. 15223-C-2016

By this application, condonation of a delay of 50 days is sought in filing the accompanying application, seeking restoration of the appeal, after it had been dismissed-in-default vide an order of this Court dated 16.08.2016.

It has been stated in the application that the brief of the appeal had been misplaced by the clerk of learned counsel and therefore, he did not appear on the date that the appeal was dismissed.

Thereafter, in the first week of March 2017 (misprinted as 2015 in the application), the status of the application for restoration of the appeal was enquired by the applicant-appellant from the counsel, and it was found that no application for restoration had been filed.

Accordingly, the application is stated to have been filed thereafter, resulting in a delay of 50 days in filing the accompanying

application, seeking restoration of the appeal.

The application is accompanied by the affidavit of the clerk to learned counsel. The explanation is accepted and the application is allowed and the delay of 50 days in filing the application seeking restoration of the appeal (CM No. 15224-C-2016), is condoned.

CM No. 15224-C-2016

By this application recalling of the order dated 16.08.2016 is sought by which the appeal had been dismissed-in-default. It is prayed that the appeal be restored to its original number and status.

It is to be noticed that the appeal had actually been dismissed in default as it had not been argued for 05 dates consecutively uptill 08.07.2016, on which date it had been recorded in the order that if the matter was not argued on the next date of hearing, the appeal would be deemed to have been dismissed-in-default. Despite that, none had appeared on the next date, i.e. 16.08.2016, and consequently the appeal was held to have been dismissed-in-default.

For the reasons already given while accepting the application seeking condonation of delay in filing this application, as also for the reason that learned counsel is prepared to argue the appeal on merits, the application is allowed and the appeal is restored to its original number and status.

RSA No.5588 of 2015

This is the second appeal of the plaintiff who had sought a decree of permanent injunction before the learned Civil Judge (Junior Division), Rohtak, against the respondents-defendants, i.e. the Municipal Committee, Rohtak, and the Deputy Commissioner, Rohtak.

As per the plaintiff, he had purchased the suit property, described to be a shop situate in khasra no.10896/7758 and 7759 (min) (Shamlat), vide a registered sale deed no.4761 dated 10.10.2001. The description of the suit property was more properly depicted in a site plan annexed with the plaint.

The shop was stated to have been under the tenancy of the father of the plaintiff and as such in possession of his father, who was “in possession of the same under Shri Daya Kishan, son of Kishan Sunder” for about thirty years prior to the date of sale, the said sale stated to have been executed in the name of the plaintiff. His father is also stated to have raised temporary sheds/shops thereupon and after the death of plaintiffs' father, the plaintiff and his wife are stated to have come into possession of the shop, with even an electricity connection having been sanctioned in the plaintiffs' name, about fifteen years prior to the suit being instituted.

It was admitted that the area fell within the boundaries of the Municipal Committee and was duly allotted shops nos.45, 45-A, 46 and 46-B, Sukhpura Chowk, Ladet Road, Rohtak.

Hence, the plaintiff was stated to have raised “*pucca*” shops on the area demarcated with the letters CDEF in the site plan, and was running a shop for the sale of batteries.

The shops were also said to be assessed to house tax, which it was contended was also duly paid to the municipality.

2. It was further contended that the plaintiff and his wife had applied to the municipality for sanction of a site plan of the properties and that the Sub Divisional Engineer, Provincial Sub Division No.3 (PWD, B&R), Gohana, had asked the Executive Engineer, Division No.3 (PWD, B&R), Karnal, vide a letter dated 09.05.2002, as to whether such permission could be granted to the

plaintiff and his wife.

It was still further contended that the Executive Engineer had found that the building was away from the PWD boundary and after demarcating the plot on the site it was found that the dimensions had been properly given. Thereafter, it was contended that the plaintiff had been directed by the municipality to deposit a sum of Rs.8306/- for approval of the building plan as fee, which was duly deposited.

However, subsequently, the defendants, “in collusion with certain anti-social elements” were threatening to demolish the plaintiffs' shop, as shown in the site plan and were not permitting him to raise construction over the entire part demarcated in the site plan by the letters ABCDEFGH.

Consequently, aggrieved of the aforesaid facts, the suit was instituted on 13.01.2005.

3. Upon notice issued to them, the defendants appeared and filed a written statement taking preliminary objections as to locus, concealment of facts, mis/non-joinder of the necessary parties and omission to issue a notice.

On merits, it was stated that the suit property came within khasra no.7898, pertaining to which a civil suit was already pending and as such, the suit in the present *lis* was barred on the principle of *res judicata*.

Further, it was submitted that though a registered sale deed dated 10.10.2001 was found to have been executed, however, a perusal of the said deed revealed that there were “no discussions of area purchased” or, in other words, the area purchased had not been demarcated.

Still further, it was contended that the sale deed was shown to be in the name of the plaintiff Dharambir as also one Amar Singh son of Prabhu

Dayal, with no partition having been effected between “these two alleged

purchasers”.

The written statement further contended that illegal construction had been raised over the suit property which was removed by the officials of the municipality but the plaintiff was again now trying to reconstruct over it in the form of shops. Further, no site plan had ever been sanctioned by the municipality and in fact, the plaintiff was trying to encroach over a public road.

Thus denying all the contentions made in the plaint, dismissal of the suit was prayed for.

4. A replication having been filed by the plaintiff, denying the contents of the written statement and reiterating those of the plaint, the following issues were framed by the learned Civil Judge:-

- 1) Whether the plaintiff is entitled for decree of permanent injunction restraining the defendants from interfering in peaceful possession of the plaintiff over the property shown by letters ABCDEFGH and also from demolishing the shop shown by letters CDRF on the ground as mentioned in the plaint? OPP
- 2) Whether the plaintiff has no locus standi to file the present suit? OPD
- 3) Whether the suit is bad for non joinder and mis joinder of necessary parties? OPD
- 4) Whether the plaintiff has concealed the material facts from the Courts, if so as to what effect? OPD
- 5) Relief.”

5. The plaintiff examined himself, Devi Ram, Mahabir Singh (House Tax Clerk), Satish Kumar (Clerk in the office of the SDE, National Highway, Panipat), and Krishan Lal, Record-Keeper, MC, Rohtak, as PWs1 to 6 respectively.

He also placed reliance upon a *jamabandi* for the year 1997-98, a site plan, a report of the Local Commissioner, an assessment register, the registered sale deed dated 10.10.2001 and a letter dated 09.05.2000, pertaining to permission granted to him and his wife, Savita Devi as regards the site plan. He further tendered a noting of the Executive Engineer in the report of the SDE, Gohana, by way of documentary evidence.

The defendants examined Om Parkash, a Building Inspector, as DW1 and tendered various documents as Exs. D1 to D11, by way of evidence.

6. Upon considering the pleadings and the arguments and upon appraising the evidence led before her, the learned Civil Judge first recorded a finding that even as per the stand of the respondents, seen with the evidence led by them, there was no dispute that the suit property, identified as shop nos.45, 45-A, 46 and 46-B come within khasra nos.10896/7758 and 7759 min (Shamlat). The plaintiffs' purchase of the suit property on 10.10.2001 also stood established, though it was seen that even as per the sale deed, Ex.P8, the plaintiff had purchased a shop in the Shamlat Deh, alongwith one Prabhu Dayal.

It was also found that the plaintiff had filed an application for sanction of the site plan; however, prior to the said application, the defendants had actually visited the suit property and found that an illegal construction was being raised thereupon, upon which notices were issued to the plaintiff under the provisions of Section 208 of the Haryana Municipal Act, 1973 (which provides for an order of demolition and stoppage of building and works).

Thereafter, even after the application had been filed by the plaintiff on 11.04.2000, vide a letter dated 19.06.2000 the municipality had

apprised the plaintiff that since the area where the property is situate is Shamlat Deh, sanction of the site plan could not be given unless he got his share determined by the Court, to which the plaintiff had categorically refused, on the ground that his property was constructed a long time ago and he being in possession of the same, paying house tax on it, he was not required to get it partitioned.

7. It was further found that pursuant to the notice issued under Section 208, the plaintiff had refused to receive the order dated 12.04.2000, which was consequently affixed on the suit property on 24.04.2000, after which another notice, Ex.D9, was issued to him for removing the illegal construction, invoking Sections 235 and 237 of the Act.

Of the aforesaid provision, Section 235 empowers the committee to take action if the directions given in a notice issued are not complied with. Section 237 pertains to recovery of costs of execution of any action taken by the municipality.

The plaintiff was found to have refused to receive the said notice also, which was again affixed on the suit property on 27.04.2000.

Again, the plaintiff was informed that sanction qua a site plan could not be given as long as he did not get his share determined in the Shamlat land but the plaintiff still did not heed the said advice/direction.

8. The learned Civil Judge therefore found that the plaintiff not having complied with directions to remove illegal construction and to seek sanction of the site plan after partition of the suit property, he actually did not have a right to seek the injunction prayed for.

Learned counsel for the plaintiff also having argued before the trial Court that since he was never informed that a site plan was not being

sanctioned, as such, it would be deemed to have been sanctioned, the argument was rejected on the ground that with notices issued to him, the plaintiff was obviously aware of why he was not being allowed to construct upon the suit property.

Another argument to the effect that since the 'suit property' was situate on the spot for about 20 years, and therefore, it could not be removed even in terms of Section 208, the said argument was rejected on the ground that the provision uses the word “may”, and not “shall” and hence, it was not obligatory upon the defendants to make an order for the removal of the construction or to legalize the illegal act of the plaintiff over the suit property.

9. Even the issues of locus and concealment of material facts were decided against the plaintiff, with the civil Court holding that the plaintiff had actually concealed material facts in the form of notices issued to him.

Holding as above, the suit of the plaintiff was dismissed, but with no costs imposed.

10. Upon appeal, the learned first appellate Court (Additional District Judge, Rohtak), after noticing the pleadings, the issues framed and the evidence led by both sides before the lower Court, as also the arguments addressed before the appellate Court, first noticed the documents led by way of evidence, and recorded a finding that in fact though there were building foundations mentioned in the report of the Local Commissioner, however, there were no shops existent on the spot in the year 2005, i.e. when the suit was filed. Thereafter, noticing the detail of the notices issued to the plaintiff, refusing to sanction the construction prior to the suit property being partitioned, it was held that the finding of the lower Court could not be faulted, despite the fact that house tax was shown to be paid by the plaintiff.

Refusal of the plaintiff to accept notices issued under Sections 209, 235 and 237, was also found to be a fact by the lower appellate Court, as was the affixation of the notices at a conspicuous place on the suit property.

11. It was also specifically found that the report of the Local Commissioner, Ex.P3, recording that there was no shop existent on the spot on the date of filing of the suit or during the pendency of the suit, with the said report never having been challenged, actually the question of demolition of any shop did not arise and therefore, if the plaintiff was to raise any construction over the suit property, he was obviously required to get the site plan sanctioned and as such, with the suit property never having been partitioned, there was no error in the judgment of the lower Court holding that such site plan could not be sanctioned, partition being a pre-condition raised by the respondent municipality.

Consequently, the first appeal filed by the present appellant-plaintiff was also dismissed.

12. Before this Court, learned counsel for the appellant has not been able to refute the finding of the lower appellate Court to the effect that the report of the Local Commissioner actually stated that no shops were existent in the site plan in the year 2005. However, what seems very obvious, from a perusal of the judgments of the Courts below, as also the arguments addressed before this Court, is that at some point construction without a sanctioned site plan may have been raised, with the plaintiff thereafter wanting to make a “*pucca*” construction or a new construction on the site, due to which he raised foundations for such new construction, which was objected to by the municipality, vide its letter dated 11.04.2000, after which the appellant-plaintiff applied for sanction of the site plan on 09.05.2000, which was refused

on the ground that he was required to get the suit property partitioned, his purchase being that of a share in Shamlat land, and that too his own purchase also being alongwith another person.

It would also seem obvious, though no specific finding of the Courts below has been recorded to that effect, that the house tax earlier being paid, would be in respect of the shops earlier existent on the suit property, though no firm argument in that regard has been made even before this Court by learned counsel for the appellant.

13. Thus, with no shop found to be existent on the spot by the Local Commissioner, with that report not challenged, naturally an inference is to be taken that there was actually no construction and therefore, a building plan was submitted for sanction thereof. As such, the argument raised before the lower Courts in terms of Section 208 of the Haryana Municipal Act, which empowers the Executive Officer or Secretary of the municipality to carry out any demolition of a building erected without a sanction plan or to stop erection of any new building even if the process of construction has started, was a wholly misconceived argument.

Even if an argument were to be raised that since house tax was paid, the report of the Local Commissioner is to be disbelieved, it would make no eventual difference because any building raised without sanction of a site plan, is liable to be demolished in terms of the said provision itself, i.e. Section 208. In any case, there being no proof that the building was existent at the time when notice was issued to the plaintiff to stop construction and to demolish whatever he had already constructed (foundations etc.), the action of the municipality cannot be faulted.

14. As regards the contention made before those Courts to the effect

that the site plan not having been sanctioned for a period of more than 60 days after an application for the same was made, such sanction would be deemed to be granted, is a wholly fallacious argument, as found by the lower Courts also, inasmuch as, the plaintiff already having been issued a notice to stop construction on 11.04.2000, after which he applied for sanction of the plan on 09.05.2000, and thereafter a notice still having been issued to him even on 19.06.2000, with him refusing to accept it, the said provision of deemed sanction does not come into operation at all.

15. Consequently, finding no merit in this appeal, it is dismissed with costs of Rs.5000/-.

(AMOL RATTAN SINGH)
JUDGE

March 18, 2017
nitin/dinesh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No.