

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.502 of 2014

Date of decision:10.8.2017

Darbara Singh

...Appellant

Versus

Smt.Ravinder Kaur Sandhu and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Sanjiv Gupta, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Present regular second appeal is directed against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for permanent injunction and mandatory injunction filed by the plaintiffs was dismissed by the learned trial court vide its impugned judgment and decree dated 24.2.2011 and thereafter their first appeal was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 8.4.2013.

Plaintiffs did not come before this Court in the regular second appeal. Appellant was not party to the civil suit. He sought leave of the court for filing the present appeal vide his separate Civil Misc. application No.1226-C of 2014, which has been allowed by this Court vide separate order of even date.

Brief facts of the case, as noticed by the learned first appellate

court in para 2 of its impugned judgment, are that the plaintiffs are residents of Manshahia colony, near railway crossing no.21, Patiala having their houses got constructed on the plots purchased by them or their family members from defendant No.1 and her mother. It was alleged that the houses of the plaintiffs were situated over the land which was covered under the duly approved Town Planning Scheme No.4A of Patiala having been sanctioned vide letter No. 157-6-C-76/12555 dated 31.3.1976, drawing No. DTP (P)-1338/75 dated 15.9.1975, the original of which was lying with the Municipal Corporation, Patiala and the construction was raised by them as per site plans got sanctioned by them under that scheme. It was further alleged that the land shown with red colour in the site plan, was kept for green park, which was being maintained by defendant No.2 and in the scheme, proper arrangements were to be made for the roads, parking space and green parks etc, so that the residents of the locality might not feel any difficulty. It was next alleged that scheme No.4A was sanctioned for the land belonging to defendant No.1 and her family members, who sold the plots to various persons including the plaintiffs as per the said scheme and after purchasing the plots, they raised the construction, but now defendant No.1 being influential person was threatening to alienate and transfer the said land, which was made for green park, to which she had no right. It was also alleged that defendant No.1 was requested not to encroach upon or raise any construction thereon and to remove the encroachment and also not to transfer or alienate the land meant for green park, but defendant No. 1 through its employees were delaying the matter; rather defendant No.2 was hand in glove with defendant No.1 to deprive the plaintiffs of their legal right to enjoy the facility of park to the residents of the locality. When the

defendants refused to accept the claim of the plaintiffs, they filed suit for permanent injunction and mandatory injunction.

Defendants were served in the suit. Defendant No.1 appeared and filed his contesting written statement. Defendant No.2 filed a separate written statement, admitting the claim of the plaintiffs. It was admitted by defendant No.2-Municipal Corporation that the disputed suit property was part of a development scheme, which was duly sanctioned by the competent authority, vide letter dated 31.3.1976. Plaintiffs filed their replication.

On completion of pleadings of the parties, the learned trial court framed the following issues:-

- i. Whether plaintiffs are entitled for permanent injunction as prayed for? OPP
- ii. Whether plaintiffs are entitled to mandatory injunction as prayed for? OPP
- iii.3. Whether the suit of the plaintiffs is false and frivolous? OPD
- iv. Whether the plaintiffs have not come to the court with clean hands? OPD
- v. Whether the plaintiffs have got no cause of action to file the present suit? OPD
- vi. Whether the suit of the plaintiffs is not properly valued? OPD
- vii. Whether the suit is not maintainable for want of notice under section 396 of Punjab Municipal Corporation Act? OPD
- viii. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties produced on record their documentary as well as oral evidence. After hearing the 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 pleaded case for want of sufficient and cogent evidence. Accordingly, their suit for permanent injunction and mandatory injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 24.2.2011. Feeling aggrieved, plaintiffs filed their first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 8.4.2013.

Plaintiffs did not file any regular second appeal before this Court as they might have felt satisfied and accordingly reconciled the matter. However, the appellant, claiming himself to be similarly situated and having common interest with the plaintiffs, sought leave of the court to file appeal, which was granted. Hence, this regular second appeal, at the hands of appellant.

Heard learned counsel for the appellant.

It is a matter of record that Satpal Singh and Kishan Chand Khanna filed CWP No.5531 of 2008 (Satpal Singh and another Vs. State of Punjab and others) before this Court, wherein defendant No.2-Municipal Corporation was also party as respondent No.3. In the said case, dispute was pertaining to one Delight Colony and petitioners in the said property were claiming themselves to be the residents of Delight Colony, which was found part of sanctioned Scheme No.4-A. It is also not in dispute that the land involved in the present litigation, is being claimed that of Manshahia Colony, whereas in the order dated 13.10.2009 passed by a Division Bench of this Court, in the above-said CWP No.5531 of 2008, the area involved

therein was of Delight Colony.

After ignoring the technicalities including the locus standi of the appellant to file and maintain the present regular second appeal, despite the fact that he was not party to the suit, when learned counsel for the appellant was asked to show any documentary or oral evidence that the area of Delight Colony and Manshahia Colony were not forming part of Town Planning Scheme No.4-A, he had no answer. Learned counsel for the appellant could not refer to any material in this regard. Having said that, this Court feels no hesitation to conclude that both the learned courts below were within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

It is also not in dispute that the suit for mandatory and permanent injunction was filed by the plaintiffs in the year 2004 and it was pending decision, when the above-said CWP No.5531 of 2008 was filed before this Court. In spite of the pendency of civil suit, said fact was not brought to the notice of this Court by the appellant, for the reasons best known to him. Another relevant aspect was that, although the respondent-municipal corporation was party respondent No.3 in the writ petition as well as in the civil suit, factum of pendency of civil suit was not brought to the notice of this Court even by the respondent-municipal corporation and that too for no good reasons.

Appellant cannot claim ignorance in this regard, particularly when he claimed himself to be a public spirited person. In this view of the matter, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned

judgments and decrees and the same deserve to be upheld, for this reason also.

Further, operative part of the impugned judgment dated 8.4.2013 passed by the learned Additional District Judge would show that the matter was still left open to the respondent-municipal corporation for initiating any action on the representation of the residents of locality, as per the orders passed by this Court in CWP No.5531 of 2008. Under these undisputed facts and circumstances of the case, no fault can be found with the concurrent findings of facts recorded by both the learned Courts below in their respective impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

Learned Additional District Judge, before arriving at his judicious conclusion, re-considered the facts of the case as well as evidence available on record, in the correct perspective. Relevant observations made by the learned first appellate court in paras 48 to 50 of its impugned judgment, which deserve to be noticed here, read as under:-

“As per order passed by Hon'ble High Court, the residents of the locality were directed to make a suitable representation to the Municipal Corporation, Patiala, but there is nothing on record that till today, any representation was made to the Municipal Corporation, Patiala. There is also nothing on record as to what action has been initiated by the Municipal Corporation, Patiala on the basis of this order passed by Hon'ble High Court, despite the time of six months granted by Hon'ble High Court.

In view of above discussion, it is held that the ld. Trial court has rightly come to the conclusion that appellants/plaintiffs have failed to prove implementation of the scheme or that the disputed property is left as green park for

residents of the locality under the said scheme; rather it is proved and is an admitted fact that respondent/defendant no.1 is in possession of the disputed property. Ld. Trial court has rightly held that appellants/plaintiffs are not entitled to injunction as prayed for. The findings of the learned lower court are based on correct appreciation of both oral as well as documentary evidence which do not call for interference by this Court and as such are upheld on all the issues. With due respect, the law cited by ld. Counsel for appellants/plaintiffs are not applicable to the facts of present case being distinguishable. Both these points are accordingly answered in favour of respondents/defendants and against the appellants/plaintiffs.

In the net result, appeal is devoid of merit and same is dismissed with costs. However, this judgment shall not stand in the way of Municipal Corporation, Patiala, in case it initiates any action on the representation of the residents of the locality as per order passed by Hon'ble High Court passed in Civil Writ Petition No. 5531 of 2008 titled as Satpal Singh Walia and others vs. State of Punjab and others decided on 13.10.2009 ,in accordance with law...”

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 this Court in **Virupakshayya Shamkarayya Vs. Neelakanta Shivacharya Pattadadevaru, 1995 AIR (SC) 2187, Tirumala Tirupati Devasthanams Vs. K.M.Krishnaiah, 1998(3) SCC 331 and Yogendra Pal Vs. Municipality, Bhatinda, 1994(6) SCC 709, Municipal Corporation, Ludhiana and another Vs. Balinder Bachan (D) by LRs & others, 2004 (5) SCC 182, Municipal Committee, Thanesar Vs. Indian Oil Corporation, 1998(3) RCR (Civil) 676 (SC) and Rana Pratap and others Vs. Municipal Committee, Bhatinda and others, 1988 SimLJ 400 (P&H).**

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned Courts below. He was also unable to refer to any question of law much less substantial question of law, which is sine qua non for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. Both the impugned judgments and decrees have been found based on cogent findings recorded by the learned Courts below and the same deserve to be upheld, for this reason also. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286 and Santosh Hazari Versus 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 the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

10.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No