

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

Date of decision: 23.10.2017

CM No.12217-C of 2017 in/and
RSA No.821 of 2017 (O&M)

Charanjit Singh

...Appellant

Vs.

Captain Kishore & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Jastin Hans, Advocate,
for the applicant-appellant.

RAJIV NARAIN RAINA, J. (ORAL)

CM No.12217-C of 2017

The amount has been deposited as directed.

The application is allowed for the reasons stated therein, which is duly supported by an affidavit. Order dated 13.09.2017 is recalled and the main appeal is ordered to be restored to its original number to be heard today itself for disposal.

RSA No.821 of 2017 (O&M)

The plaintiff-appellant is in second appeal aggrieved by the judgments and decrees passed by the Courts below, whereby suit for permanent injunction instituted by him was dismissed.

Heard.

The learned lower Appellate Court at Bhiwani, while affirming the findings recorded by the trial Court, has observed in his judgment as follows:

“15. In aforesaid vivid scenario, this court is left with no choice but to decide the case on equity considering all attending circumstances of this case. Had location of both the plots, plot No.1 and plot No.2 are of such a nature that both attracted similar value, there would not be any dispute between the parties. The dispute arose due to value of the property by its location. In order to ascertain aforesaid facts, I would like to revert back to auction proceedings Ex.D6. It clearly emerges out that plot No.1 was purchased by Ramesh Kumar in lieu of Rs.28,633/- and plot No.2 was purchased by Captain Kishore in lieu of Rs.46,110/- and plot No.3 was purchased by Charanjeet Singh, plot No.4 was purchased by Ramesh Kumar. Plot No.1 was purchased at the rate of Rs.282/- per square yard and plot No.2 was purchased at the rate of Rs.415/- per square yard. Thus, it is clear that location of plot No.2 was on better footing as compared to plot No.2. If any of the site plan produced by the parties are considered, it is clear that location of plot No.1 was having cutting edge over location of plot No.2. Plot No.2 opens towards parking area and also towards main Loharu road, thus, contention of learned counsel for respondent-defendants appears to be logical whereas contention of learned counsel for plaintiff-appellant appears to be ill-logical. In totality of the aforesaid observation, heavy onus lies upon the plaintiff-appellant to prove its case, which has not been discharged by the plaintiff-appellant in any manner and thus, he is to be non suited.”

In this midst of this, the dispute appears to be actually one of better location of shops and the Municipal Council, Bhiwani i.e. the auctioning authority was not impleaded as a party respondent to throw light on the subject matter and the suit having been filed by the appellant it was

for him to lead clear and cogent evidence in respect of all the four contiguous plots and why were their auction prices different at about the same time. All the four plots are commercial properties. The appellant does not deny that he is in ownership of plot measuring 111.11 square yards. In these circumstances, the only tool that the lower Appellate Court had in his hands was to apply equity and balance out the interest of both sides. It is not the case that the appellant will lose his plot. It is impossible for this Court to enter upon demarcation dispute in second appeal especially when the auctioning authority is not a party to the suit.

Consequently, I do not find any merit in the instant regular second appeal, which is ordered to stand dismissed in *limine* with no question of law arising for consideration.

However, the parties will be at liberty to go back to the office of the Municipal Council, Bhiwani, sit together with their officers on the site/layout plan of the market in question and satisfy themselves as to which plot belongs to whom when they all contiguous in a row with presumably at least one common wall, in case the shops are built up.

23.10.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *No*

Whether Reportable: *No*