

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

**RSA No.3006 of 1996
Date of decision:27.07.2018**

Matadin and others

... Appellants

Vs.

Municipal Committee, Bawal and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjay Mittal, Advocate
for the appellants.

None for the respondents.

AMIT RAWAL J.

The appellant-plaintiffs are in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit for permanent injunction claiming that suit property comprised in khewat no.385, khatauni no.1543, khasra no.1563, measuring 13 bighas 4 biswas situated within the revenue estate of Bawal was owned and possessed by the plaintiffs and other proprietors of village and jamabandi for the year 1960-61 treating the State Government as owner in the column of ownership was illegal and incorrect.

The suit was filed against the Municipal-Committee. In the suit, respondent-defendants instituted the application under Order 7 Rule 11 of Code of Civil Procedure (in short 'CPC') for dismissal of the suit as

simpliciter suit for permanent injunction was not maintainable. It was also alleged that no notice as per the provisions of Section 52 of the Haryana Municipal Act, 1973 (in short '1973 Act') was ever served upon the defendants which was mandatory in nature for filing the suit, therefore, the simpliciter suit without claiming the relief of declaration was not maintainable.

Vide order dated 01.10.1993, the aforementioned application was allowed and the suit was dismissed being not maintainable.

Since the order had the trapping of decree as per the provisions of Section 2 of CPC, the appellant-plaintiffs instituted the appeal before the Lower Appellate Court. The appeal has been dismissed, vide judgment and decree dated 22.08.1996.

Mr. Sanjay Mittal, learned counsel appearing on behalf of the appellant-plaintiffs submitted that relief of declaration is inherent in a suit for permanent injunction, thus, the suit could not have been dismissed for want of claiming proper relief. Section 52 of 1973 Act envisages filing of the suit against the Committee and its employee, therefore, notice to the Municipal Committee is required only in those suit where any act of the Municipal Committee or its official was contemplated to be challenged, whereas, present suit was only for permanent injunction which can always be maintained for illegality in perpetuity.

In support of the aforementioned contention, relied upon the judgment rendered by this Court in **Madan Mohan Vs. Arun Kumar 1984**

PLJ 239 and thus, urged this Court for setting aside the findings under challenge by remitting the matter to the trial Court for adjudicating the suit on merit, in essence, by affording the opportunity to the parties to lead evidence in support of their respective pleadings.

There is no representation on behalf of the respondents.

I have heard the learned counsel for the appellant-plaintiffs, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Mittal.

The injunction sought against the respondent-defendants was in the nature of declaration by setting aside the entry showing the State Government to be recorded as owner under the column of ownership on the premise that suit property belonged to the proprietors of the village. Such relief can always be sought under Section 34 of Specific Relief Act, 1963. For the sake of brevity, Section 34 reads as under:-

“34. Discretion of court as to declaration of status or right.— Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee.”

There is no interim order granted by this Court while admitting the appeal. It is too late in a day to put the clock back and to remit the matter back as per the submission of Mr. Mittal. It appears that wisdom had not bestowed upon the appellants to seek appropriate remedy in accordance with law in view of the observations given by the trial Court.

There is no dispute with regard to the ratio decidendi culled out by this Court in Madan Mohan's case (supra) but the observations came in respect of the proceedings under Order 39 Rules 1 and 2 of CPC and not for adjudication of the main suit, thus, it does not apply to the facts and circumstances of the present case.

As an upshot of my findings, I do not find any illegality and perversity in the findings under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

July 27, 2018

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No