

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 1451 of 1998

Date of Decision: 26.11.2018

Municipal Committee, Bahadurgarh

...Appellant

VERSUS

Maha Dei and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Chahar, Advocate
for the appellant.

Mr. A.C. Jain, Advocate
for the respondent.

SURINDER GUPTA, J.(Oral)

Plaintiff-respondent-Godhu Ram (since deceased) filed suit seeking the relief of mandatory injunction to the effect that defendant-appellant i.e. Municipal Committee, Bahadurgarh be directed to make necessary correction in the House Tax Register by removing names of Sube Singh and others and enter the name of plaintiff-respondent in the House Tax Register and in the other record maintained by the defendant-appellant with regard to property bearing Municipal Nos. 120, 121 and 122, Ward No. 4 (old) and new nos. 291, 292 and 293, Ward no. 7, Dharampura, Bahadurgarh.

2. Learned trial Court while recording findings on issues no. 1 and 2 as to whether plaintiff is owner of the building and is entitled to relief of mandatory injunction observed that the plaintiff is not owner of the property in dispute. It was observed that defendant-appellant is owner of the land underneath the building. The relief of mandatory injunction as sought

by the plaintiff was, however, denied.

3. On appeal, learned Ist Appellate Court upheld the findings of learned trial Court with the observations as follows:-

- (i) Plaintiff has not even claimed ownership of the land underneath the disputed building.
- (ii) During course of arguments, counsel for plaintiff has not claimed ownership of plaintiff over the disputed plot, rather he conceded that plaintiff is not owner of the land underneath his building.
- (iii) The findings of learned trial Court on issue no. 6 that defendant (appellant) is owner of the underneath land does not suffer from any infirmity.
- (iv) This land is proved to have been gifted to Municipal Committee by Mool Chand.
- (v) The plaintiff has admitted that he raised construction on the land, which was lying vacant and not belonging to him.
- (vi) He is owner of the building only whereas the underneath land is owned by the defendant-appellant.

4. With the above observations, Municipal Committee was directed to make entry in the House Tax Assessment Register to the effect that the building on the disputed land belongs to plaintiff-respondent and the underneath land is owned by the defendant-appellant. The appeal filed by the plaintiff was accepted to that extent.

5. Learned counsel for the appellant has confined his submission only to the extent that it may be clarified that in the event of suit for possession being filed by the Municipal Committee, the findings that the

superstructure over the building belongs to plaintiff/his legal heirs will not come in the way of deciding the title of the defendant-appellant.

6. The appellant has already been declared to be owner of the land underneath the building of the plaintiff. The plaintiff has not challenged the findings recorded by the Courts below to this effect. It is quite surprising that instead of seeking further remedy of filing of separate suit to seek possession, the appellant has opted to file this appeal. The right of parties has already been ascertained. The mere entry in the House Tax Register that the building was unauthorizedly constructed by the plaintiff over the land belonging to Municipal Committee will not effect in any manner the right of appellant to seek possession of the land underneath the building.

7. Keeping in view above facts, I find no merit in this appeal and the same is dismissed.

8. It is, however, made clear that nothing observed by the Courts below regarding construction over land owned by Municipal Committee will come in the way of suit filed by appellant seeking possession over the suit property.

November 26, 2018

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No