

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

**RSA No. 3667 of 2000(O&M)
Date of decision : 20.03.2018**

Phool Chand

..... Appellant

versus

Municipal Council, Narnaul

..... Respondent

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Sanjay Mittal, Advocate for the appellant.

None for the respondent.

AMIT RAWAL, J. (Oral)

This appeal has been filed by the appellant-plaintiff against the concurrent finding of fact given by the Courts below whereby suit for permanent injunction against Municipal Council seeking restraint from forcibly interfering into ownership and possession over the suit property and from demolishing the boundary wall raised in the said property, had been dismissed by the trial Court vide judgment and decree dated 11.4.1997 and upheld by the Lower Appellate Court by order dated 12.09.2000.

The appellant-plaintiff instituted the suit on the premises that he is owner in possession of land bounded as under:-

East : Open land

West : Open land in possession of Nanag Ram,

North : Open land of Masjid and

South : Raasta

situated in Mohalla Mian-ki-Sarai, Narnaul (hereinafter referred to as the land in dispute) and had raised the construction of boundary wall over the same which was duly sanctioned by the Deputy Commissioner. Municipal Committee had originally rejected the site plan but the same was sanctioned on 30.09.86. There was litigation with regard to the plot which was pending but the fact of the matter is that the municipal committee had no right to demolish the boundary wall by interfering in the ownership and possession of the plaintiff.

The municipal Committee, in reply, contested the suit and submitted that the plaintiff had no right and title in the property for raising construction and the same was not raised within a period of one year from the date of permission and, therefore, that permission dated 30.09.86 lapsed. Since the parties were at variance, the trial Court framed the following issues on the basis of pleadings of parties:-

1. Whether the plaintiff is owner in possession of the suit property? OPP
2. Whether plaintiff is entitled for injunction as prayed for?OPP
3. Whether the plaintiff has got no locus standi to file the present suit?OPD
4. Whether the plaintiff has not come to the court with clean hands and as such is not entitled for discretionary relief by way of injunction?OPD
5. Whether plaintiff has filed the present suit just to harass the defendant and as such defendant is entitled to special costs, if so how much?OPP
6. Relief.

Both the parties led their evidence in support of their respective pleadings and the suit and appeal, as indicated above, were dismissed.

Mr.Sanjay Mittal, learned counsel appearing for the appellant-plaintiff submitted that the Court below could not have dismissed the suit,

for the sanction had already been granted on 30.09.86 and positive and direct evidence through the testimony of PW1 Parkash Chand, Record Clerk, Municipal Committee, Narnaul had been brought on record to establish that the construction was within the time prescribed. Unnecessary weightage had been given that the property belonged to the Wakf Board and not of the Municipal Committee. There has been misinterpretation of the provisions of Section 207 of the Haryana Municipal Act. The prayer sought was more innocuous, i.e. not to dispossess except in due course of law much less demolition of the boundary wall.

There is no representation on behalf of the municipal Committee despite service. The appeal is of the year 2000. Accordingly I proceed to decide the appeal on merits.

I have heard learned counsel for the appellant and have gone through the record with the assistance of learned counsel for the appellant and find that there is no force and merit in the submissions of Mr.Mittal, for as per the provisions of Section 207 of the Haryana Municipal Act, the permission granted for raising construction was valid only for a period of one year whereas the plaintiff did not move any fresh application for getting the sanction revived. Ex.D1 brought on record revealed that the plaintiff had addressed a letter to the municipal committee whereby he had undertaken to remove the construction within three days in the Raasta. The aforementioned evidence was sufficient for the Courts below to deny the injunction, for there was a direct admission on behalf of the plaintiff for having not raised construction in accordance with the sanction granted by the Deputy Commissioner. The finding of the trial Court with regard to seeking injunction against the true owner is no longer a good law in view of the law

laid down by the Hon'ble Supreme Court in case Rame Gowda(dead) by LRs v. M. Varadappa Naidu(dead) by LRs and another 2004(1) 1 SCC 769 but for falling in that category, a person has to establish long and settled possession. Since it has already come on record that the land belonged to the Wakf Board which is subject matter of adjudication in the other RSA where it is yet to be established whether the Wakf Board owing to the judgment and decree dated 29.08.1990 had been able to establish their ownership but the fact of the matter is that the municipal committee is the authority which manages the area which falls within the urban area de hors of the fact that it is not the owner of the land. Any construction raised without the sanction of the municipal committee cannot be sought to be legalised under the garb of the injunction.

In view of the aforesaid discussion, I am of the view that the findings of the Courts below do not call for any interference and not suffer from any illegality or perversity. No substantial question is required to be framed.

Dismissed.

**(AMIT RAWAL)
JUDGE**

20.03.2018

sunita

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No