

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

RSA No.873 of 2000

Ranbir Singh

....Appellant

Versus

Estate Officer, HUDA Hisar and Ors.

....Respondents

Date of Order: 25.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate for the appellant.

Mr. Deepak Saini, Advocate for

Mr. Pritam Singh Saini, Advocate for the respondents.

AMIT RAWAL, J (ORAL)

Appellant-plaintiff is aggrieved of the judgment and decree of reversal dated 21.9.1999 passed by learned Addl. District Judge, Hisar whereby the appeal preferred by the respondents-HUDA against the judgment dated 22.4.1997 passed by learned Civil Judge (Jr. Division), Hisar, decreeing the suit of the plaintiff-appellant, has been accepted.

Appellant-plaintiff instituted the suit on the premise that he purchased the plot measuring 70' X 70' as shown in the site plan marked as ABCD in scheme Area of Commercial Urban Estate No.1 from defendant Nos.1 & 2/HUDA in the auction held on 16.10.1987 for a consideration of Rs.6,50,600/-. The plaintiff deposited 10% of auction price i.e Rs.65,050/- on the same day and another 15% price of the same i.e Rs.97,595/- on 18.1.1988. Remaining price was to be deposited in instalments. The

possession of the said property in dispute was to be delivered by defendant No.1 after completion of the development work. It is alleged that the size of the plot was reduced by the defendants to 50' X 50' without notice unilaterally and arbitrarily and moreso at the back of the appellant. Requests were made to the defendants to correct and increase the size, which was not acceded to. It was in these circumstances that the suit was filed.

Suit was contested by the defendants, who appeared and stated that the suit of the plaintiff was pre mature and was not maintainable nor the plaintiff had exhausted all the alternative remedies available to him. On merits, it was stated that the size of the plot was 50' X 50', which was announced at the time of auction. The factum of giving highest bid and issuance of allotment letter to the plaintiff dated 12.1.1988 were not disputed. It was stated that the size of the plot in dispute was never fixed as 70' X 70'.

On the basis of pleadings of parties, the trial Court framed the following issues:

- “1. Whether the plaintiff is entitled to the allotment and possession of plot as mentioned in the head note of the plaint as alleged?OPP*
- 2. Whether the plaintiff is entitled to the relief as prayed for?OPP*
- 3. Whether the suit is liable to be dismissed for want of service of notice u/s 80 CPC?OPD*
- 4. Whether the civil court has got no jurisdiction to try the present suit?OPD*
- 5. Whether no cause of action has accrued to the plaintiff for filing the present suit?OPD*
- 6. Whether the plaintiff has got no locus standi for*

filing the present suit?OPD

7. Whether the suit is not maintainable in the present form?OPD

8. Whether the suit is bad for non-joinder or mis-joinder of necessary parties?OPD

9. Relief.”

Apart from examining himself as PW2, appellant-plaintiff in support of his case examined PW1 Des Raj, Record Keeper from the office of HUDA who during his cross examination deposed that the plaintiff was allotted the plot of the size 50' X 50' besides proving allotment letter as Ex.D1. He also tendered in evidence certain documents i.e Ex.P.1 to Ex.P.5.

On the other hand, defendants examined DW1 Balbir Singh, Assistant from the office of Estate Office, HUDA, Hisar and brought on record allotment letter as Ex.D1, proposal letter for auction of commercial plot at Hisar as Ex.D2, proposal of auction for commercial sites/shops in Urban Estate No.1 and 2 Hisar as Ex.D3 and pamphlet Ex.D4 vide which offer for auction was made.

The trial Court on the basis of preponderance of evidence available on record much less taking into account clause No.1 of allotment letter Ex.D1 decreed the suit observing that the plaintiff-appellant is entitled to allotment and possession of the plot measuring 70' X 70' instead of 50' X 50'.

Feeling dissatisfied, the defendants-HUDA filed the appeal against the judgment and decree of the trial Court, which has been accepted by learned lower Appellate Court while observing that the request of the plaintiff-appellant for correction of the size was declined on 31.7.1991 and second representation was also rejected. It was observed that once the letter

showed that the dimensions of the site were modified from 50' X 50' to 70' X 70' with stipulation mentioned above, the plaintiff had only right to use 10 feet wide pavement all around the site as per terms and conditions of letter Ex.D1 and he could not raise construction thereon as per Zoning approved by the Chief Town Planner HUDA.

Learned counsel for the appellant submitted that the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law and the same suffers from illegality and perversity, for, the lower Appellate Court did not advert to Ex.P.5, a letter issued by the Chief Administrator, Haryana Urban Development Authority, Manimajra, Chandigarh to the Administrator, HUDA Faridabad for approval of size i.e 70' X 70' instead of 50'X50'. The approach of the lower Appellate Court is highly technical and cannot be said to be justified and legal. The lower Appellate Court has totally misread the relevant material placed on record as the whole emphasis was laid to the contents of letter dated 28.9.1993 (Ex.D1) whereas the focus should have been on the main cause.

Per contra, learned counsel for the respondents-HUDA submitted that the judgment and decree passed by the lower Appellate Court is perfectly reasonable and justified and do not call for interference. The lower Appellate Court has rightly passed the judgment based on appreciation of evidence being the last court of law and facts. The plaintiff had not raised construction as per the site plan and the actual size of the disputed plot is 50' X 50'. He submitted that the terms and conditions of the letter (Ex.D.1) were violated and the construction was not as per the zoning plan, therefore, the finding of learned trial Court in decreeing the suit is wholly erroneous.

After hearing learned counsel for the parties and appraising the paper book, I find force in the submissions of learned counsel for the appellant, for, the lower Appellate Court has completely abdicated in not giving any reason with respect to letter dated 18.11.1988 issued by the Chief Administrator, HUDA Mani Majra whereby the approval was accorded for allotment of cafeteria site with size of 70' X 70' instead of 50' X 50' with the rider that the allottee will carry out the construction on the said site as per Zoning approved by the Administrator, HUDA, Panchkula.

It is also pertinent to notice here that although in para 11 of its judgment, the lower Appellate Court has referred to issuance of the letter showing that the dimensions of the site were modified from 50' X 50' to 70' X 70' but assigned no plausible explanation. Plaintiff allegedly was using 10 feet wide pavement all around the site as per Zoning approved by the Chief Town Planner HUDA and if there was any violation, the judgment and decree of the trial Court could have been upheld with liberty to the defendants-HUDA to take action in accordance with law.

Once after examining the evidence threadbare, and as per letter Ex.P5, it has been found by the lower Appellate Court that the Chief Administrator, Haryana Urban Development Authority, Manimajra, Chandigarh vide his memo No.A-15-88/38913 dated 18.11.1988 intimated the Administrator, HUDA, Faridabad about the acceptance of the appellant-plaintiff's request with respect to size of plot to be 70' X 70' instead of 50' X 50', in my view, no fault can be found with the approach of the learned trial Court while decreeing the suit.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the

ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262 on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled.” [at paras 27 - 29]” “27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts

Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

Keeping in view the aforementioned, the judgment and decree passed by the lower Appellate Court is set aside and the judgment and decree passed of the trial Court is restored. However, it is made clear that in case the plaintiff-appellant is found to have violated any term and condition of Zoning Bye-laws, the respondents-HUDA would be at liberty to take appropriate action in accordance with law. During the pendency of the appeal if the plaintiff has sold the property, this order would be binding on the subsequent purchaser also.

The second appeal is allowed in the above terms.

April 25, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No