

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: September 28, 2018

1. RSA No.3190 of 2003 (O&M)

Municipal Council, Bahadurgarh

...Appellant

Versus

Pehlad Singh & another

...Respondents

2. RSA No.3473 of 2007 (O&M)

Smt.Sunita Devi

...Appellant

Versus

Municipal Council, Bahadurgarh

...Respondent

3. COCP No.1395 of 2013 (O&M)

Smt.Sunita Devi

...Appellant

Versus

Amit Dhanda

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Sushil K. Sharma, Advocate for
Mr. M.L.Sharma, Advocate,
for the appellant in RSA No.3190 of 2003 &
for the respondent in COCP No.1395 of 2013.

Mr. Tushar Sharma, Advocate,
for the respondents.

Mr. M.P.S. Mann, Advocate,
for applicant in RSA No.3473 of 2007.

AMIT RAWAL, J.

This order of mine shall dispose of two Regular Second
Appeals bearing No.3190 of 2003 and 3473 of 2007 and one COCP No.
1395 of 2013 as the common question of law and fact is involved.

RSA No.3190 of 2003 titled as “Municipal Council, Bahadurgarh Versus Pehlad Singh & another” has arisen out of the decision rendered in Civil Suit No.124 of 1996 (hereinafter called Suit No.1), whereas RSA No.3473 of 2007 titled as “Smt. Sunita Devi Versus Municipal Council, Bahadurgarh” out of decision of two Civil Suits bearing No.111 of 1996 (Smt. Sunita Devi Versus Municipal Council, Bahadurgarh) and 29 of 1996 (Municipal Council, Bahadurgarh Versus Smt. Sunita Devi) for permanent injunction, whereas COCP No.1395 of 2013 (Smt. Sunita Devi Versus Amit Dhanda) in RSA No.3473 of 2007 has been filed for violation of order dated 18.10.2007, vide which dispossession was stayed on the premise that the officers of the Municipal Council, Bahadurgarh started raising fore-wall in the land owned and possessed after putting building material.

Though the facts are different, but the controversy involved in both the Regular Second Appeals is common, thus, both are being decided together.

Pehlad Singh and Dharam Singh instituted Civil Suit No.124 of 1996 (Suit No.1) seeking permanent injunction against the defendant, i.e., Municipal Council on the premise that they were proprietors/biswedars of Panna Jogian 8 Biswa of Village Bahadurgarh, Tehsil Bahadurgarh in respect of land measuring 8 bigha 3 biswa of Village Bahadurgarh from interfering into their possession, much less forcible dispossession.

It was averred that the possession was limited to their shares in the shamlat land and had fenced the land shown by letters ABCD in the site plan, but the defendant threatened to dispossess by taking forcible possession.

Appellant-defendant Municipal Council contested the suit by denying the plaintiffs to be owners in possession of the suit land, maintainability, locus standi, much less non service of notice under Section 52 of the Haryana Municipal Act, 1973. On merits, it was stated that the plaintiffs had no concern with the property in any manner as the land comprised in Khewat No.899/813 min, Khatoni No.1559 min and Khasra No.2237 (1-14), Khatoni No.1548, Khasra No.230 (0-18) and Khewat No.1358/1198, Khatoni No.2285 min, Khasra No.2239 (2-0), total measuring 4 bigha 12 biswas situated within the abadi of Village Bahadurgarh was owned and possessed by the proprietors of Panna 8 Biswa Bahadurgarh as per jamabandi for the year 1989-90 and Khasra No.2238 being Rasta, vested in the Municipal Council. The aforementioned land was gifted to the Municipal Council vide gift deed No.1612 dated 07.01.1957 and possession was also handed over.

It was further averred that some of the proprietors had instituted a civil suit bearing No.288 of 1971 under Order 1 Rule 8 of Civil Procedure Code titled as “Puran etc. Versus M.C.Bahadurgarh etc.”, which was compromised and the gift deed was admitted resulting into ownership and possession of the defendant. As per the contents of the gift deed, Municipal Council was to construct a park in the area of 1500 sq. yards and the remaining land was to be used as Gau-gora. After the compromise, when the steps were taken to implement the intention expressed in the gift deed, unsocial elements and land grabbers filed the cases and procured ad-interim injunction on one pretext or the other. The factum of the plaintiffs being proprietors of Panna 8 Biswa was also denied.

On the basis of the pleadings of the parties, the trial Court

framed the following issues in Suit No.124 of 1996:-

- “1) Whether the plaintiffs are the proprietors of Jogian Panna of Village Bahadurgarh, District Rohtak and are in possession of the portion marked by letters ABCD shown in red colour in the site plan and detailed in Para No.2 of the plaint as alleged? OPP*
- 2) Whether the suit is not maintainable in the present form? OPD*
- 3) Whether the plaintiffs are estopped from filing of the present suit due to their own acts and conduct? OPD*
- 4) Whether the present suit of the plaintiffs is bad for non-joinder of the necessary parties? OPD*
- 5) Whether the present suit is liable to be dismissed for want of notice under Section 52 of the Haryana Municipal Council Act, 1973? OPD.*
- 6) Whether the suit is hit by principle of resjudicata? OPD*
- 7) Whether the defendant is entitled to special costs under Section 35-A C.P.C.? OPD*
- 8) Relief.”*

Civil Suit bearing No.111 of 1996 titled as Sunita Devi Versus Municipal Council, Bahadurgarh for permanent injunction had been filed through attorney on the premise that she was owner in possession of plot measuring 560 sq.yards out of Khasra No.4360 as per the boundaries described in the site plan, which was purchased by her father Sukhbir vide registered sale deed No.3645 dated 13.02.1984 and had been in possession of the suit property. Even the site plan submitted to the Municipal Council was sanctioned, but the Municipal Council intended to take steps to dispossess the plaintiff, therefore, the suit aforementioned was filed.

Defendant-Municipal Council contested the aforementioned suit and also filed counter claim seeking possession by stating that they have become the owner of land measuring 4 bigha 12 biswas as per gift

deed No.1613 dated 07.11.1957 and also gave particulars with regard to the compromise.

The trial Court, on the basis of the pleading brought on record, framed the following issues in Civil Suit No.111 of 1996:-

- “1) Whether the plaintiff is owner in possession of the suit property? OPP*
- 2) If issue No.1 is proved in affirmative, whether the plaintiff is entitled to a decree for permanent injunction as prayed for? OPP*
- 3) Whether defendant is owner of the suit property and has been illegally dispossessed during the pendency of the suit? OPD*
- 4) If issue No.3 is proved in affirmative whether the defendant is entitled to a decree for possession as put forward in the counter claim? OPD*
- 5) Whether the suit is not maintainable in the present form? OPD*
- 6) Whether plaintiff has suppressed the true and material facts from the court? OPD*
- 7) Relief.”*

The trial Court dismissed Civil Suit No.124 of 1996, however the appeal taken by the plaintiffs before the Lower Appellate Court bearing No.160 of 2001 was allowed. It is in these circumstances, the Municipal Council has filed RSA No.3190 of 2003, whereas Civil Suit No.111 of 1996 was decreed by the trial Court, but the Lower Appellate Court reversed the findings and allowed the appeal of the Municipal council and, therefore, Sunita Devi is in appeal.

The contempt petition has been filed during the pendency of Regular Second Appeal No.3473 of 2007 alleging violation of the interim order dated 18.10.2007, whereby while issuing notice of motion,

dispossession of the plaintiff was stayed.

Mr. Sushil K. Sharma Advocate for Mr. M.L.Sharma, learned counsel for the appellant in Regular Second Appeal No.3190 of 2003 submitted that the findings arrived at by the Lower Appellate Court are not sustainable in the eyes of law in view of the fact that the findings arrived at in Civil Suit No.288 of 1971 filed in the representative capacity, the matter was compromised and the factum of the gift deed dated 07.01.1957 was acknowledged. The trial Court after evaluating the evidence rightly dismissed the suit by holding that the plaintiffs and the defendants were bound by the judgment and decree dated 28.11.1974, for, it is settled law that any finding arrived at in a suit filed in representative capacity would be binding on all the proprietors. The land was being used for common purposes, i.e., cows-dung, kurdies, khurri, khores, park and khel for drinking water for the animals and Gau-gora etc., thus, the finding to the effect that the possession can be taken only after the partition, is not sustainable. The plaintiffs cannot be accorded the status of co-sharers. Possession of the Municipal Council was exclusive and, therefore, the suit for injunction was not maintainable and, thus, urged this Court for setting-aside the judgment and decree of the Lower Appellate Court.

Mr. Tushar Sharma, learned counsel representing the respondent-plaintiffs Pehlad Singh and Dharam Singh submitted that the findings of fact and law arrived at by the Lower Appellate Court are perfectly legal and justified as Ex.P3 jamabandi showed the nature of the land to be banjar kadim. The gift deed pertained to only small area of the joint holding of the proprietors and the status of the Municipal Council would be of a co-sharer and, therefore, the injunction granted by the Lower

Appellate Court is perfectly legal and justified and the remedy lied elsewhere.

It was next contended that the earlier suit was not maintainable as it was not filed by all the proprietors but by few and no consent of all the proprietors was obtained, therefore, the compromise would not be having a binding effect. Provisions of Order 1 Rule 8 CPC leave no manner of doubt that the Lower Appellate court examined the copy of the previous plaint, i.e., Civil Suit No.288 of 1971 Ex.D4 and compromise Ex.D5 and opined that no notice was given to all the co-sharers either in person or through publication, therefore, there was no compliance of sub-rule (4) of aforementioned provisions. Under the garb of compromise decree by virtue of a gift deed, the Municipal Council cannot be permitted to take the benefit of vesting without seeking partition.

Mr. M.P.S. Mann, learned counsel appearing on behalf of the appellant in RSA No.3473 of 2007 submitted that the Lower Appellate Court committed illegality and perversity in reversing the well reasoned judgment and decree of the trial court and adopts the arguments of Mr. Tushar Sharma by submitting that the Municipal Council cannot claim the possession in the absence of any partition even if the gift deed was acknowledged though did not admit the status of a co-sharer in the proprietary body. There is no bar for seeking partition amongst the proprietors. Lower Appellate Court failed to appreciate that Khewat No.4360 was of enormous size containing more than 16 bighas of land, whereas the impugned gift was of lesser area. There was no challenge to the sale deed in the absence of any declaration despite the fact that the counter claim was filed for seeking possession. The gift deed was executed only by

ten proprietors qua their share only in the joint land having holding of 14000 sq. yards and cannot be applied to all the proprietary body. The entire land of Panna was recorded as 57000 sq. yards and appellant's father was not amongst the one who gifted the land, therefore, there is abdication and perversity.

Per contra, Mr. Sushil K. Sharma submitted that the Lower Appellate Court rightly exercised the power being the last court of fact and law and found that the plaintiff was not in possession of the suit property as the sale deed envisaged that the possession was taken, but no evidence has been placed on record to show that the possession was ever taken. The sanctioning of the site plan would not clothe the status of the plaintiff Sunita Devi to be in possession, for, it was valid for a period of one year, but no steps were taken to raise construction. On the other hand, Municipal Council had already erected the boundary walls and park and was maintaining the land as Gau Gora and, thus, urged this Court for dismissal of the appeal.

In the contempt petition, it was argued that the Municipal Council had taken steps to take the possession despite the fact that vide order dated 18.10.2007, there was an injunction qua dispossession. In the absence of any application for vacation of stay or clarification, the Municipal Council could not put the building material into the land and, thus, prayer was made for taking appropriate action.

I have heard the learned counsel for the parties, appraised the paper book, impugned judgments and decrees, records of the courts below and of the view that the findings of fact and law arrived at by the Lower Appellate Court in RSA No.3473 of 2007 is not the correct view, for,

concededly the gift deed dated 07.11.1957 was only by ten proprietors, whereas the total panna was 57000 sq. yards. Even the sale deed also pertained to a particular share, though envisaged putting the vendees into possession of specific area by boundaries. In such circumstances, all the subsequent vendees would acquire a right as a co-owner in the proprietary body.

Municipal Council cannot resort to take possession in the absence of any partition as possession of all the proprietary body would be construed to be joint. It is not matter of dispute that there can be partition in the proprietary body for simple reason that the land was maintained for use of common purposes as and when exigencies arose. The Municipal Council cannot be permitted to blow hot and cold as on one hand they sanctioned the site plan knowing that Sunita Devi was owner, but on the other, claimed the possession of the suit property by way of counter claim. Appropriate steps can always be taken for non-compliance of the directions contained in the sanctioned plan, i.e., for not raising construction for one year, but possession cannot be taken in the manner and mode as indicated above.

I am also in agreement that the finding of the Lower Appellate Court vis-a-vis non-compliance of the provisions of sub-rule (4) of Rule 8 of Order 1CPC. The same reads as under:-

“(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of Rule 1 of Order XXIII and no agreement, compromise or satisfaction shall be recorded in any such suit, under Rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).”

Therefore, the findings rendered in Civil Suit No.288 of 1971 vide judgment and decree dated 28.11.1974 could not be held to be binding upon all the proprietary body.

As an upshot of my findings, no ground for interference is made out in Regular Second Appeal No.3190 of 2003. The same is accordingly dismissed.

The judgment and decree rendered by the Lower Appellate Court in RSA No.3473 of 2007 is set-aside. The questions of law framed vide order dated 05.02.2010 are answered in favour of appellant Sunita Devi and against the respondent-Municipal Council. The judgment and decree of the trial Court is restored.

The parties shall be at liberty to seek separate possession in accordance with law and the Municipal Council is restrained from taking forcible possession of the suit property by putting any material in the absence of partition.

In view of the aforementioned observations, contempt petition is also disposed of.

**(AMIT RAWAL)
JUDGE**

**September 28, 2018
ramesh**

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No