

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2666 of 2012 (O&M)

Date of Decision : 15.03.2018

Manoj and others

....Appellants

Versus

Siri Pal Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Amit Jain, Advocate
for the appellants.

Mr. Jai Vir Yadav, Advocate
for respondents no. 1 to 4.

Surinder Gupta, J. (Oral)

Heard.

It has been pointed out during course of arguments that the original suit was filed against Municipal Committee, Pataudi (Jatauli), Tehsil Pataudi, District Gurgaon (now Gurugram), seeking the relief of injunction as follows:-

“10. That the plaintiff, therefore, humbly prayed that a decree for permanent injunction restraining the defendant and its officials from interfering in the peaceful possession of the plaintiff over the suit property mentioned in para no. 1 and 2 of the plaint and from demolishing the house of the plaintiff mentioned in para no. 2 of the plaint and described in the site plan attached with the plaint, may kindly be passed in favour of the plaintiff and against the defendant with costs. Any other relief which the leaned court may deem just and proper be also granted to the plaintiff.”

2. During pendency of the suit, an application under Order 1 Rule X of Code of Civil Procedure (CPC) was moved by Rajbir, Siri Pal Singh and others, which was allowed vide order dated 25.09.2000 and applicants in application under Order 1 Rule X CPC were impleaded as defendants no. 2 to 8. They also filed written statement and after contest, trial Court decreed the suit as prayed for. In the prayer clause of plaint, the relief was claimed only against Municipal Committee and its officials as plaintiff never amended his plaint to claim any relief against defendants no. 2 to 8. However, some of the defendants preferred appeal, which was accepted by Ist Appellate Court and judgment and decree passed by learned Civil Judge (Jr. Division), Gurgaon was set aside and suit of plaintiff was dismissed with costs. The decree passed by learned Civil Judge (Jr. Division) was not against appellants before the Ist Appellate Court and the Municipal Committee has not filed any appeal against judgment and decree of the trial Court.

3. Learned counsel for appellants submits that original plaintiff-Khushal Pal Singh had not sought any relief against defendants no. 2 to 8 and no decree was passed against them, as such, first appeal filed by them was also not maintainable. However, this issue was not raised before the Ist Appellate Court during course of arguments. He also concedes that the decree passed by learned Civil Judge (Jr. Division), even if maintained, will not be binding on defendants no. 2 to 8.

4. Learned counsel for respondents no. 1 to 4 also concedes this legal proposition. He, however, fairly concedes that observations that in the revenue record property is wrongly entered in the name of Municipal Committee and the same is liable to be corrected, as made by Civil Judge

(Jr. Division) are beyond the scope in this case as plaintiff has claimed relief of permanent injunction on the basis of possession and title of parties is not in issue. Observations regarding title of parties to the suit as made by Court below be treated as *obiter dicta*. Accordingly, this appeal is disposed of as follows:-

- (i) As the judgment and decree passed by Civil Judge (Jr. Division), Gurgaon was only against Municipal Committee, Pataudi, which has not filed any appeal, as such, the same has attained finality qua that Municipal Committee.
- (ii) The appeal filed by appellants before Ist Appellate Court was not maintainable.
- (iii) As plaintiff has not claimed any relief against defendants no. 2 to 8, no such relief against them can be allowed even in this appeal.
- (iv) It is, however, made clear that judgment and decree passed by Civil Judge (Jr. Division), Gurgaon will not be binding on defendants no. 2 to 8 or their legal heirs and they shall be at liberty to avail legal remedy available to them under the law.
- (v) Nothing observed by the Court below on the question of title of plaintiff or Municipal Committee, Pataudi (Jatauli) shall be binding on either party and shall be treated as *obiter dicta*.

March 15, 2016

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No

