

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

205

RSA No.4627 of 2012 (O&M)
Date of Decision : 08.03.2018

Dilawar Singh

..... Appellant

Versus

State of Haryana and others

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. M.S.Kathuria, Advocate for
Mr. Rakesh Nehra, Advocate
for the appellant.

Mr. Sanjay Kumar Saini, AAG, Haryana.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the judgment of the lower appellate Court reversing that of the trial Court and thereby dismissing a suit filed by the appellant. The appellant had filed a suit for mandatory injunction directing the respondents No.1 to 3 to ensure that the respondents No.4 to 9 do not violate the provisions of the Punjab Scheduled Roads and Controlled Areas (Restrictions of Unregulated Development) Act, 1963 by raising unauthorized construction.

The trial Court decreed the suit but the appellate Court held that once the appellant was not alleging any personal damage and was avowedly acting in the public interest, any suit filed would have to meet the parameters of Section 91 of the CPC which are to the following effect :-

“91. Public nuisances.- (1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as

may be appropriate in the circumstances of the case, may be instituted,—

(a) by the Advocate-General, or

(b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.”

As per the appellate Court there had to be atleast two persons and thereafter leave of the Court would have to be obtained before initiating such a suit. Admittedly, in the present case the appellant is solitary and no leave was obtained from the Court. Consequently, it has to be held that the suit as filed was not maintainable.

In the circumstances, no fault can be found with the judgment of the lower appellate Court.

Appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

08.03.2018

Pooja sharma-I

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No