

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.5352 of 2016 (O&M)

Date of Decision:15.01.2018

Balwinder Singh and another

...Appellants

Versus

Madan Gopal Sharma and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Munish Gupta, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM-13897-C-2016

For the reasons stated in the application, the same is allowed,
Delay of 3 days in filing the appeal is condoned.

Main case

Defendants-appellants are in the regular second appeal against
the concurrent findings of fact arrived at by the courts below.

The plaintiffs are the residents of a colony, which was carved
out by one Shri Banarsi Dass and others. The residents of the colony filed a
suit for declaration, claiming that the vacant possession of plot, which was
left in the centre of the colony, is in fact, for common use and is being used
as a park. It is further pleaded case of the plaintiff that out of the disputed
land a piece of 4 marla land is being used by the Municipal Corporation by
installing a tubewell.

The defendants contested the suit and claimed that they have
purchased the property from Banarsi Dass on 17.7.1992. They further
claimed that there is a decree for permanent injunction against the

Municipal Corporation with regard to 15 marla of land out of 19 marlas purchased by the defendant-appellant.

Both the courts below, after appreciating the evidence available on the file, decreed the suit and held that in fact the land, which was left out in the centre of the colony, is a park. The courts have further relied upon the fact that a tubewell has been installed on the land measuring 4 marlas in the property in dispute and the defendant-appellants or their predecessors never objected thereto. The learned first appellate court has also relied upon various sale deeds in which this property is being shown as a vacant land for common use-'park'. The court has relied on Exhibits P28-sale-deed and P29-lay out plan (annexed with the sale-deed), showing the property as a park.

Learned counsel for the appellant has vehemently argued that once the Municipal Corporation has filed its written statement, admitting that piece of land is not a park and the court could not have granted declaration to that effect.

I have heard the submission. However, I do not find any substance therein.

Learned counsel for the appellant has produced before me a photocopy of the lay out plan Ex.P3 on the file. A bare look at the aforesaid lay out plan shows that the colony was carved out in such a manner that a piece of land was left in the centre. The colony was developed much before 1974. It is normal that while developing a colony, some part of the land is assigned for common use.

Still further in 1974 itself, documentary evidence has come on record to prove that the residents of the area were using it to be a public park. Further, Municipal Corporation had dug a tubewell on the part of this

land and the defendants-appellants and their predecessors did not lodge any protest.

Even in the earlier decree, which was passed on 2.9.1983, the court had recorded a finding that the area under tubewell does not vest with the owner. The concurrent findings of the courts below cannot be said to be illegal or perverse in any manner as the same are based on proper appreciation of evidence.

In view of the above, the present regular second appeal is dismissed.

15.01.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No