

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**R.S.A No.6977 of 2016(O&M)
Date of decision :23.08.2018**

**Municipal Council, now Municipal Corporation Sonapat through
Rohtash Chander, Executive Officer, Municipal Corporation,
Sonapat.**

..... Appellant

Versus

**M/s Rama Group, through its partner Mohan Lal son of Jai Dev,
resident of 272, Model Town, Sonapat.**

..... Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL

**Present: Mr.Deepak Sabharwal, Advocate
for the appellant.**

LISA GILL,J

Present appeal has been filed by the appellant-defendant against the judgement and decree dated 08.01.2013 passed by the learned Addl. Civil Judge (Sr. Division), Sonipat, whereby suit filed by the plaintiff-respondent has been decreed as well as judgement and decree dated 16.05.2016, passed by the learned Additional District Judge, Sonipat, whereby appeal preferred by the present appellant has been dismissed.

Brief facts necessary for the adjudication of the case are that the plaintiff-respondent, a partnership firm, filed a suit for declaration to the effect that the plaintiff-respondent is the owner in possession of the property. It was asserted that notice issued to the plaintiff regarding

demolition of the building in question was illegal as after submission of the site plan of the building to be erected on the premises, no objection/communication was received from the Municipal Council, within the stipulated period of three months of its submission thereof. A prayer for permanent injunction was addressed restraining the defendant-appellant from interfering in the peaceful possession of the plaintiff in the building as well as a restraint on any illegal recovery. Plaintiff-respondent pleaded that it was a partnership firm and owner in possession of the land/building with Municipal Council Unit No. 1121/29 as detailed in the plaint. Said site was purchased by the firm vide registered sale deed dated 2087 dated 30.05.2008 from Jai Bhagwan after getting a no dues certificate from M.C, Sonipat, besides payment of development charges of ₹1,16,160/-. Jai Bhagwan, vendor of the appellant (plaintiff) and Jai Bhagwan's father were lessees in possession of two plots. In accordance with the Scheme floated by the Government of Haryana in 1978, the entire consideration amount of the property was deposited by Jai Bhagwan by 1978 and 1982. Site plan was submitted by the plaintiff on 02.12.2008 for sanction, which was duly received in the office of the appellant. However, despite passing of three months, no intimation was received by the plaintiff and nothing was heard from the appellant-defendant even after the expiry of the statutory period. Amazingly notice issued by the appellant-corporation was received by the plaintiff on 09.03.2009 stating that the building on the site would be demolished as the same has been raised without the site plan being sanctioned. The earlier notice dated 21.11.2008 as mentioned in the subsequent notice

dated 09.03.2009, it was pleaded by the plaintiff was never received. When the plaintiff contacted the officials of the appellant-defendant, it was informed that fee of ₹16,700/- should be deposited. This amount was accordingly deposited by the plaintiff by way of demand draft dated 12.03.2009. However, the Municipal Council refused to withdraw the said notice. Hence the suit was filed.

Appellant-defendant resisted the suit. Written statement was filed raising various preliminary objections. It was denied that the plaintiff was the owner of the suit property. The plaintiff's vendor, it was stated wrongly and fraudulently got the sale deed no.2087 registered on 30.05.2008 in the plaintiff's favour without the required permission. This fact came to the knowledge of the appellant when the plaintiff submitted the site plan for being sanctioned. Development charges from the plaintiff were not accepted. The site plan was not sanctioned. As construction was raised without getting the site plan sanctioned, notices were rightly issued to the plaintiff and the defendant-appellant, it was contended was well within its jurisdiction to demolish the building. Dismissal of the suit was prayed for.

Replication was filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff, a partnership firm, is owner in possession of the land/building fully mentioned in para number 1 of the plaint?OPP
2. If issue number 1 is proved in affirmative, whether the plaintiff is entitled for decree of declaration and permanent injunction as prayed for?OPP
3. Whether the suit of the plaintiff is not maintainable in the present form?OPD
4. Whether the plaintiff has no cause of action to file the

- present suit?OPD
5. Whether the plaintiff has no approached the Court with clean hands and has suppressed the material facts from the Court?OPD
 6. Whether the defendants are entitled for Special Costs U/s 35-A CPC ?OPD
 7. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court on appreciation of evidence on record and facts and circumstances of the case, decreed the suit filed by the plaintiff-respondent.

Appeal preferred by the defendant-appellant was also dismissed by the learned Additional District Judge, Sonipat, vide impugned judgement and decree dated 16.05.2016.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant submits that there is gross misreading of evidence on record by both the learned Courts below. It is contended that an unregistered firm is precluded from filing a suit against a third party. Moreover, the official who executed the sale deed in question was not authorised to have the same executed. It is thus prayed that both the learned Courts below have erred in allowing the suit. It is therefore prayed that the appeal filed by the appellant be allowed and the suit filed by the respondent-plaintiff be dismissed.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

The plaintiff-respondent is undoubtedly an unregistered partnership firm, however, it has been rightly held that the statutory and

non-contractual rights are not within the scope of the disability inflicted by Section 69 (2) of the Partnership Act. Reliance has been correctly placed by both the learned Courts below on **M/s Haldiram Bhujiawala Vs. M/s Anand Kumar Deepak Kumar, AIR 2000 SC 1287**. Statutory right of the respondent-plaintiff is duly recognised under section 205 of the Haryana Municipal Act.

The plaintiff firm undisputedly purchased the suit property from Jai Bhagwan in whose favour the appellant council executed a registered sale deed. Sale deed dated 30.05.2008 was executed by the appellant in favour of Jai Bhagwan. This sale deed has never been challenged by the appellant council at any stage. It is also not in dispute that Jai Bhagwan, the plaintiff-respondent's vendor had deposited the entire sale consideration in the year 1982. As per letter dated 23.05.1978 (Ex.PW7/A) it is apparent that Deputy Commissioner, Sonipat, was authorised and permitted to execute sale deeds in respect of the land of Garhi Brahmanan at the rate mentioned therein. As per letter dated 04.06.2002 Ex.PW12/1 issued by the Director Urban Development Authority, Haryana, it is further further clarified to the Deputy Commissioner, Sonipat that permission of higher authority is required for the purpose of selling the land and not for registration of the sale deeds where the consideration amount stood deposited. It was further advised that in case a candidate fulfils all conditions and has cleared the entire price, the sale deeds may be executed by the local authorities at their own level. The Deputy Commissioner, Sonipat, forwarded this letter to the Executive Officer, Municipal Council, Sonipat to proceed further as per

the clarification. The appellant council in the meantime passed resolution no. 10 dated 29.10.2001(Ex.PW7/B) and decided to execute sale deeds in favour of persons who had already deposited the entire price. Jai Bhagwan, the plaintiff-respondent's vendor had admittedly deposited the entire sale price in the year 1982. This fact is proved by Ex.PW12/C. Sukhbir Singh, Ex-Rent Clerk, MC Sonipat, who had executed the sale deed in favour of Jai Bhagwan was duly armed with the authority letter which was signed by the Municipal Engineer on behalf of the Executive Officer concerned in this respect. Various other sale deeds were also executed in the same manner in favour of different vendors. There is nothing on record to indicate that the appellant-council had at any point of time questioned the execution of the sale deeds on its behalf. No action had ever been taken by the appellant to avoid the said sale deed and neither was any counter claim filed in the present suit. It is further noticed that as per letter Ex.PW12/M, the Sub-Registrar had conveyed certain queries after the execution of the sale deed in favour of the plaintiff's vendor. The Sub-Registrar was informed by the Executive Officer of the Council vide Ex.PW12/M that the sale deed has been rightly executed and registered. PW-7-Jai Bhagwan (vendor of the respondent-plaintiff) and PW-4 and PW-5, deed writers, PW-9 Rent Clerk, M.C. Sonipat, are relevant witnesses who have cemented the plaintiff's case. It is thus rightly held by the learned trial Court that even in case of any irregularity of the authorisation, the same stood ratified by the Competent Authority. Appellant-Council is indeed precluded from disputing the title of the plaintiff firm or its vendor.

In respect to the question of demolition of the building in question, it is relevant to note that as per Section 205 of the Haryana Municipal Act, 1973, when a building plan/site plan is submitted for sanction, but the same is not accepted, refusal thereof must be intimated within sixty (60) days from the receipt of the notice of intention to erect the building and in case no intimation is given within the stipulated period, the same would be deemed to have been sanctioned. There is nothing on record to indicate that the appellant-Council had conveyed its refusal to sanction the site plan within the stipulated period as above.

Learned trial Court has discussed the matter threadbare on this aspect as well. It is specifically observed by the learned trial Court that nothing shall however preclude the appellant-Council from carrying out its duties and take necessary action in case the building is erected by the plaintiff-respondent in violation of any of the building bye-laws etc.

No other argument has been raised.

Learned counsel for the appellant-defendant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

Keeping in view the facts and circumstances as discussed above, I do not find any infirmity, illegality or perversity in the impugned judgments and decree dated 08.01.2013 and 16.05.2016 passed by the learned Addl. Civil Judge (Sr. Division) Sonipat and learned Additional District Judge, Sonipat, respectively, which warrants any interference by

this Court.

Present appeal is, consequently, dismissed with no order as to cost.

23.08.2018

s.khan

(LISA GILL)
JUDGE

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