

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

114

RSA No.5584 of 2015 (O&M)

Date of decision: 11.09.2018

Maina Devi

..... Appellant

Versus

Nagar Parishad Narnaul and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. Chanderhas Yadav, Advocate  
for the appellant.

Mr. Deepak Manchanda, Advocate  
for respondents No.1 and 2.

Mr. Aman Bahri, Advocate  
for respondent No.3.

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**ANIL KSHETARPAL, J. (ORAL)**

Plaintiff-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below while dismissing the suit for declaration filed by the plaintiff claiming that she is owner in possession of the property in dispute.

Plaintiff claims that she and her vendor Leela Ram had raised construction over the property in the year 1964-65. The defendant which is a Municipal Committee, Narnaul contested the suit and pleaded that the plaintiff has encroached upon a public passage. It was further pleaded that husband of the plaintiff Tara Chand had earlier filed a suit with respect to the same property which was dismissed by the learned trial Court on 16.05.2001. First appeal as well as second appeal were dismissed on

03.12.2004 and on 19.01.2006 respectively. In the aforesaid litigation, it was held that the property in dispute is a public property being part of the public passage. It was further pleaded that the property which was purchased by the plaintiff from Leela Ram, her brother-in-law is different. Defendant No.3 took a stand that the sale deed dated 21.02.1994 is a sham transaction between the brother-in-law and sister-in-law. It will be noted that Mahada Ram was having seven sons including Leela Ram and Tara Chand. The plaintiff-appellant is wife of Tara Chand. The first suit was filed by Tara Chand was dismissed and the judgment has attained finality. Learned trial Court as well as learned First Appellate Court after appreciating the evidence dismissed the suit while returning a finding that the property is part of a public passage and therefore, vests with the Municipal Committee. It will be noted that in the year 1993, inhabitants of the locality moved an application complaining encroachment by Tara Chand, husband of the plaintiff. Tara Chand through Ex.D-5, a writing dated 12.07.1993 undertook that he will raise construction only in his own property and would not encroach upon the property of the Municipal Committee. Defendant No.3-Sat Narain thereafter moved an application when Tara Chand was making preparation to encroach upon the land. The inspection of the area was carried out and it was found that Tara Chand has encroached upon certain property. The order was passed for removal of the aforesaid encroachment vide order dated 27.12.1995 and 03.01.1996. Tara Chand thereafter moved an application and gave undertaking that he would remove the encroachment within the specified time but instead of removing this encroachment, the present suit was got filed. It will be noted that the regular second appeal filed by Tara Chand was dismissed on 19.01.2006

whereas the present suit was filed on 18.02.2006. Still further, although, the plaintiff claims that she was not party to the earlier litigation, however, there is no evidence that husband and wife were living separately or she was not in knowledge of the previous litigation. In the considered opinion of this Court, the present litigation is an abuse of the process of the Court. After the husband has lost the litigation, a fresh litigation has been initiated at the behest of the wife. Still further, as noticed above, the plaintiff is claiming title on the basis of sale deed executed by brother of Tara Chand.

Keeping in view the aforesaid facts, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is dismissed.

**11.09.2018**

Dinesh Bansal

**( ANIL KSHETARPAL )  
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No