

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

RSA No.5804 of 2014 (O & M)
Date of Decision:08.05.2018

Dal Chand and others

...Appellants

Versus

Municipal Council, Hisar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. Prateek Mahajan, Advocate
for the respondent.

ANIL KSHETARPAL, J.

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

At the outset, it must be noticed that the appellants were given opportunity by this Court vide order dated 19.04.2018 to remove non-compoundable violations and get the compoundable violations compounded. However, learned counsel for the appellants has submitted that he has instructions to argue the appeal on merits.

Plaintiffs filed a suit for permanent injunction restraining the defendants from demolishing and dismantling any portion of shops No.101-D and 102-D, Rajguru Market, Hisar. Facts in brief are that the plaintiffs sought decree for permanent injunction against Municipal Council, Hisar, which had passed an order for removal of encroachment and unauthorized construction. Plaintiffs claimed that they are owners of suit

property. It is the case of the defendant Municipal Council, Hisar that the

plaintiffs have constructed basement by covering the front of verandah/gallery and has raised a level of verandah/gallery/corridor in front of the shop by about 3 feet, which is causing lot of inconvenience to the general public and neighbours.

It may be significant to note here that in the year 2000, plaintiffs were given opportunity to get the construction of the basement approved to the extent it is permissible and remove whatever was not permissible. Ex.P-6 and Ex.P-7 are the communications by Municipal Council, Hisar in this regard. Plaintiffs filed a previous suit and the same was disposed of when Municipal Council, Hisar agreed to grant an opportunity of hearing to the plaintiffs. Plaintiffs filed their representations/objections. After giving opportunity of hearing Executive Officer of the Municipal Council, Hisar passed a detailed order on 30.06.2000. Copy whereof is EX.P-A on the trial Court record.

Learned counsel for the appellants has submitted that in case of another owner who also committed similar violations, learned trial Court had decreed the suit declaring that shop owners are also owners of verandah/ corridor/gallery in the front of his shop and, therefore, plaintiffs is also entitled to the decree. Learned counsel for the appellants has submitted that aforesaid judgment has become final against the Municipal Council, Hisar and, therefore, appellants should also be granted same relief. Learned counsel further submitted that both the Courts below have dismissed the suit only on the ground that the plaintiff-Kuldip Kumar, who appeared as PW-2 did not appear for cross-examination.

On the other hand, learned counsel for the respondent has

vehemently opposed the contention of learned counsel for the appellants

and has submitted that such judgment passed by a Court cannot come to the benefit of the appellants particularly when the aforesaid judgment is not between the parties. He further submitted that a negative discrimination can be pleaded by the appellants. He further submitted that the appellants have raised the floor level of the verandah/gallery/corridor in front of shop by 3 feet approximately making it difficult for general public to pass through. He submitted that such gallery/corridor is meant for passage and by changing the level plaintiffs have made it difficult for the general public to pass through.

It is not in dispute that construction raised by the plaintiffs is without sanction of the building plan. Appellants are basing their claim on the basis of a judgment passed by the civil Court in the case of Subhash Kumar Gupta vs. Municipal Council, Hisar.

In the considered opinion of this Court, such judgment cannot be treated as a laying down new building rules. The judgment is not interparties. The relevance of judgments have been examined by the Hon'ble Supreme Court in the case State of Bihar and others vs. Shri Radha Krishna Singh and others, AIR 1983 Supreme Court 684. Para 143 of the aforesaid judgment reads as under:-

“Thus, summarising the ratio of the authorities mentioned above, the position that emerges and the principles that are deducible from the aforesaid decisions are as follows:-

(1) A judgment in rem e. g., judgments or orders passed in admiralty, probate proceedings, etc.,

would always be admissible irrespective of whether they are inter parties or not,

(2) judgments in personam not inter parties are not at all admissible in evidence except for the three purposes mentioned above.

(3) on a parity of aforesaid reasoning, the recitals in a judgment like findings given in appreciation of evidence made or arguments or genealogies referred to in the judgment would be wholly inadmissible in a case where neither the plaintiff nor the defendant were parties.

(4) The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety is precious little.

(5) Statements, declarations or depositions, etc., would not be admissible if they are post litem motam.”

In view of the aforesaid, this Court does not find any substance in the first argument of learned counsel for the appellants.

Still further, in the considered opinion of this Court, the suit only for injunction was not maintainable. Once an order had been passed directing the plaintiffs to remove encroachment and unauthorized construction by various notices and thereafter Executive Officer, Municipal Council, Hisar had passed a detailed order, plaintiffs were required to challenge the same. However, plaintiffs have not filed a suit for declaration.

In this case, the Courts below have not only decided against the appellants due to non-appearance of the plaintiffs for cross-examination but have also examined the cases on merits and have concurrently found that the construction raised by the plaintiffs-appellants is not without sanction of the building plan and is not permissible.

Plaintiffs have been given sufficient opportunities including by this Court to get the compoundable violation compounded and remove non-compoundable violations. However, plaintiffs-appellants have not chosen to avail the opportunity.

In view of the discussion made above, there is no good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular second appeal is dismissed.

08.05.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No