

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-2535-2018 (O&M)
Date of Decision: 17.07.2018

Municipal Corporation, Rohtak

--Appellant

Versus

Vikas Jain & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Anil Chawla, Advocate for the applicant/appellant.

TEJINDER SINGH DHINDSA.J (Oral)

CM-10806-C-2018

Instant application has been filed under Order 41 Rule 19 read with Section 151 CPC seeking restoration of the main appeal and for recalling of the order dated 06.07.2018 passed by this Court whereby main appeal had been dismissed for non-prosecution.

In view of the averments made in the application and duly supported by an affidavit of the counsel himself, prayer is allowed.

Order dated 06.07.2018 passed by this Court, is recalled.

The Regular Second Appeal is restored to its original number and the same is taken up on Board today itself.

Application is disposed of.

Main Appeal

Municipal Corporation, Rohtak filed a suit for declaration to the effect that the judgement and decree dated 5.5.2011 for specific performance pertaining to suit land be declared null and void. Injunction was also sought against defendant no.3 i.e. Tehsildar, Rohtak not to execute any document on the basis of the impugned judgement and decree dated 5.5.2011.

Suit of Municipal Corporation, Rohtak was dismissed by the Trial Court on 27.9.2017. Civil Appeal preferred has also met the same fate vide judgement dated 20.1.2018 passed by the learned Additional District Judge, Rohtak.

Resultantly, plaintiff-appellant is in second appeal before this Court.

Brief facts of the case are that the suit was instituted by the appellant on the pleadings that the Corporation is owner in possession of the suit land comprised in Khasra No.6714 measuring 5 kanal 10 marla situated within the revenue estate of Rohtak. Such ownership was being asserted on the strength of a notification of Haryana Municipal (Amendment) Act, 1999 and by claiming that the suit land being *Shamlat Thok* land situated in Municipal Council (now Municipal Corporation), Rohtak and as reflected vide Jamabandi for the year 2002-2003. It was further pleaded that the appellant came in knowledge that defendants no.1 and 2 in collusion and connivance with each other have obtained an ex-parte decree pertaining to the suit land inspite of knowing fully well that defendant no.2 namely Jagdish son of Basau had no right in law to transfer the suit land situated within the revenue estate of Rohtak in favour of respondent no.1.

Suit was contested in terms of filing a written statement on behalf of defendant no.1. A stand was taken that the plaintiff is neither owner nor in possession of the suit land. The Jamabandis relied upon by the plaintiff does not reflect ownership/possession. Defendant no.1 further pleaded that the decree for specific performance dated 5.5.2011 had been lawfully and validly passed. Defendant no.2 was reflected as owner in possession of the suit land in the relevant Jamabandis for the last more than

30 years and as such, was competent in law to transfer and sell his rights pertaining to such parcel of land.

Defendants no.2 and 3 inspite of being served, did not join proceedings before the Trial Court and were proceeded ex-parte vide order dated 21.2.2012.

On the pleadings of the parties, the following issues were framed by the Trial Court:-

- “1. Whether the plaintiff is entitled to the decree for declaration and permanent injunction as prayed for?OPP*
- 2. Whether the suit is not maintainable in the present form?OPD*
- 3. Whether the plaintiff has no cause of action and locus standi to file the present suit?OPD*
- 4. Whether the present suit is barred by limitation?OPD*
- 5. Whether the present suit is barred under Section 41 of the Specific Relief Act, 1963?OPD*
- 6. Whether the present suit has not been properly valued for the purposes of relief and jurisdiction?OPD*
- 7. Whether the present suit is bad for want of mandatory notice under Section 80 of CPC?OPD*
- 8. Relief.”*

Suit of plaintiff-appellant has been dismissed by both the courts below.

Learned counsel representing the appellant has argued that the courts below have erred inasmuch as no finding has been returned as regards ownership and in a suit wherein relief of declaration had been sought, it was imperative for the court to have recorded findings with regard to ownership of the suit land. In the same breath, it is urged that there was no finding recorded with regard to ownership even in the previous suit for

specific performance and which had led to the passing of the ex-parte

judgement and decree dated 5.5.2011. Further argued that suit land was *Shamlat Deh* and as such, was under the ownership of the plaintiff-appellant and the same could not have been a subject matter of agreement to sell between two private parties and as such, the judgement and decree dated 5.5.2011 directing specific performance of an agreement pertaining to a parcel of land which was under the ownership of the plaintiff-appellant, cannot sustain.

Having heard counsel for the appellant at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

A concurrent finding of fact based on appreciation of evidence has been recorded by the courts below that on the basis of a Haryana Govt. Notification dated 21.10.1999 amending the relevant provision under the Haryana Municipal Act, 1973, *Shamlat* land described in the Jamabandis as *Shamlat Thok* etc. was mutated in favour of Municipal Corporation, Rohtak as per Mutation No.16239 and duly sanctioned on 13.7.2011. However, no evidence had been adduced on record to prove that the suit property stood mutated in favour of the plaintiff-appellant-Corporation.

Furthermore, as per Jamabandi for the year 2002-2003 Ex.P-1, the suit property comprised in Khasra No.6714 is reflected as “*Shamlat thok jatain hasab rasad arazi khewat*” and is in possession of Basau i.e. father of defendant no.2, Balbir Singh, Dhanbir Singh and Raghubir Singh in equal shares being the proprietors. Nature of the land has been reflected as *Bhund* i.e. waste land. No evidence was adduced by the plaintiff-appellant to prove that suit property was being used for common purpose or for the benefit of the community. Even the testimony of PW-1 Anand Mittal did not disclose

that suit property was being used for any particular common purpose. Rather PW-1 deposed in cross-examination that he is not even aware with regard to possession of the suit property. The courts below have rightfully taken a view that the suit property does not come within the definition of *Shamlat Deh* as defined under Section 22-B of the Haryana Municipal Act, 1973 read with Ssection 61 of the Act.

Counsel has not been able to demonstrate any patent infirmity or perversity in the judgements passed by the courts below.

Instant appeal does not raise any question of law.

No merit, appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

17.07.2018
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No