

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.2902 of 1988 (O&M)

Date of Decision: April 11, 2019

Municipal Committee, Longowal

...Appellant

Versus

Jaswant Singh (since deceased) through L.Rs

...Respondents

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL**

Present: Mr. Amarjit Markan, Advocate,  
for the appellant.

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**AMIT RAWAL, J. (Oral)**

Appellant-defendant Municipal Committee is in Regular Second Appeal against the judgment and decree of the Lower Appellate Court, whereby the suit of the respondent-plaintiff for injunction dismissed by the trial Court, has been decreed.

Respondent-plaintiff, in the year 1985, sought the injunction by declaring the notice dated 12.10.1984 issued by the appellant-defendant Municipal Committee regarding the demolition of wall "AB" as per the site plan attached with the plaint, to be illegal on the premise that he was resident of Patti Dulat, Longowal and had built a house 'ABCD' as shown in the site plan and also constructed a Baithak towards the western side of the house and in the adjoining open space, stocked fuel wood. On the south of the house, built two rooms and a wall along side the drain on the southern side of the house. The aforementioned construction was fairly old, i.e.,

16/17 years. Also built a 25 feet wide wall long marked by letters 'AB'. On the south of the house, also sunk a hand pump. Municipal Committee erroneously issued the notices under Sections 195 and 195A of the Punjab Municipal Act (for short, the Act) for demolition of the construction. The notices were vague as the details of the walls were not given in the same. On an earlier occasion, he filed a suit on the same cause of action, which was dismissed as withdrawn as the plaintiff did not serve any notice under Section 49 of the Act. Thereafter, notice was served upon the defendant and, therefore, fresh cause of action accrued.

Appellant-defendant opposed the suit and maintained that the plaintiff never served any notice under Section 49 of the Act, but, however, admitted that he was a resident of Dulat Patti of Village Longowal and also built a house, but denied having stocked fuel wood on the space adjoining his house.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. *Whether the notice dated 12.10.1984 served by the defendant on the plaintiff is illegal as alleged? OPD*
2. *Whether the suit is not maintainable for want of notice U/s 49 of Punjab Municipal Act? OPD*
3. *Whether the suit is not maintainable in the present form? OPD*
4. *Whether the plaintiff is entitled to the injunction prayed for? OPP*
5. *Relief.”*

Since the onus of issue No.1 was on the defendant- Municipal Committee, they led evidence in support of the same, whereas the plaintiff in rebuttal examined PW-1 Niku Ram, retired Patwari, PW-2 Balbir Singh

and himself appeared as PW-3, whereas the defendant examined DW-1 Karam Singh Clerk and DW-2 Sukhdev Singh, a resident of Dulat Patti.

The trial Court, on the basis of the evidence brought on record, dismissed the suit, but the Lower Appellate Court, as noticed above, reversed the findings.

Mr. Amarjit Markan, learned counsel representing the appellant- defendant submitted that the title with regard to the area 25' x 20' cannot be decided in the suit, but as regards the construction of the wall, Municipal Committee did not dispute the same. In fact, the simpliciter suit for injunction without declaration was not maintainable. Though the trial Court found the service of the notice Ex.D1 to be legal and valid, but the Lower Appellate Court misinterpreted the evidence of the parties and erroneously decreed the suit.

There is no representation on behalf of the respondents. The appeal is of 1988, therefore, I proceed to decide the same in accordance with law.

I have heard the learned counsel for the appellant, appraised the paper book, records of the courts below and also of the view that there is no force and merit in the submissions of the learned counsel for the appellant- defendant.

Section 172 of the Act empowers the Municipal Committee to initiate the proceedings for punishment of imprisonment against a person, who, without the permission of the Committee erects or re-erects any immovable overhanging structure over street. The same reads thus:-

***“172. Punishment for [2] overhanging structure over street--***

***(1) Whoever without the written permission of the committee***

*[3] erects or re-erects any immovable overhanging structure projecting into a street at any point above the said ground level, shall be punishable with imprisonment of either description which may extend to one month and shall also be liable to fine which may extend to one thousand rupees.*

*(2) The committee may, by notice require the owner or occupier of any building to remove or alter, within a specified time not exceeding six weeks, such [ 1] overhanging structure as aforesaid, and no compensation shall be claimable in respect of such removal or alteration:*

*Provided that if a period of more than three years has elapsed from the completion of the [ 2 over hanging structure, no prosecution shall lie under sub section (1) - nor shall such] overhanging structure be required to be removed or altered without payment of reasonable compensation] ”.*

As a matter of fact, the Municipal Committee had issued the notices, referred above, but the wall as sought to be injuncted could not fall within the domain of the aforementioned provisions and rightly so, the injunction has been granted. It is not the case of the appellant-defendant that the respondent-plaintiff, at any point of time, made immovable overhanging structure projecting into a street on other side. It is in these circumstances, the injunction was granted in favour of the respondent-plaintiff restraining the appellant-defendant from demolition of wall,

For the reasons mentioned above, the findings of the Lower Appellate Court cannot be said to be suffering from any illegality or perversity, much less involvement of any Substantial Question of Law. No

ground for interference is made out. Resultantly, the appeal is dismissed.

However, it is made clear that the injunction granted will not be construed of conferring title on the plaintiff.

**April 11, 2019**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**  
**Whether Reportable:**

**Yes/No**  
**Yes/No**