

Regular Second Appeal No.2399 of 1989 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: March 27, 2019

1. RSA No.2399 of 1989 (O&M)

Municipal Corporation, Jalandhar

...Appellant

Versus

Om Parkash

...Respondents

1. RSA No.2213 of 1988 (O&M)

Municipal Corporation, Jalandhar City & another

...Appellants

Versus

Rajinder Singh (now deceased) through L.Rs & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Harsh Aggarwal, Advocate,
for the appellant in both the appeals.

Mr. Amit Jhanji, Advocate &
Mr. Vikram Sharma, Advocate,
for respondent No.1 in RSA No.2213 of 1988.

Mr. Varun Sharma, Advocate,
for the respondent (in RSA No.2399 of 1989)

AMIT RAWAL, J.

This order of mine shall dispose of two Regular Second Appeals bearing No.2213 of 1988 and 2399 of 1989 as the common question of fact is involved.

RSA No.2399 of 1989 is arising out of decision rendered in Civil Suit No.340 of 1984 titled as “Om Parkash Versus Municipal Corporation, Jalandhar” (for short, Suit No.1), wherein Om Parkash had sought the declaration to be owner in possession of Plot No.3 measuring 35'

x 39'2" x 41'x 42'7" comprised in Khasra Nos.7566 and 7585 with consequential relief of mandatory injunction directing the Municipal Corporation, Jalandhar to sanction the building plan submitted by the plaintiff vide receipt dated 06.03.1981.

RSA No.2213 of 1988 has arisen out of decision rendered in Civil Suit No.21 of 1985 titled as "Rajinder Singh Versus Commissioner, Municipal Corporation, Jalandhar City & another" (for short, Suit No.2), claiming permanent injunction restraining the defendants from interfering into possession or demolishing the boundary wall of the plot shown red in the plan attached.

Suit No.1 was dismissed by the trial Court, but in appeal the same was decreed, whereas Suit No.2 was decreed by the trial Court and appeal preferred by the Municipal Corporation was dismissed.

Vide order dated 03.11.2016, RSA No.2399 of 1989 was ordered to be heard along with RSA No.2213 of 1988, therefore, they are being heard and decided together.

Plaintiff, in Suit No.1, as noticed above claimed the aforementioned relief, which was disputed by the defendants on the premise that there was no actionable right and asserted that the suit property belonged to the Municipal Corporation. On the basis of the aforementioned pleadings, following issues were framed in Suit No.1:-

- "1) Whether the plaintiff is the owner in possession of the suit property? OPP*
- 2) Whether the plaintiff is entitled to the injunction prayed for? OPP*
- 3) Whether the plaintiff has got no actionable right against the defendant? OPD*
- 4) Relief."*

Plaintiff, in support of the aforementioned evidence, examined three witnesses and brought on record Ex.P1 sale deed dated 27.05.1980 and Ex.P2 jamabandi for the year 1974-75 and other documents to establish the ownership. On the other hand, the defendants brought on record Map Ex.D1 and File Book Ex.D2.

The trial Court, in Suit No.1, rendered the finding on issue No.1 against the plaintiff in the absence of proof of ownership and possession of the suit property, resulting into dismissal of the suit. The appeal preferred before the Lower Appellate Court was allowed.

In Suit No.2, defendants raised the objection that the site in dispute was a public street and there was encroachment, for which the plaintiff was served with a notice under Section 172 of the Punjab Municipal Act (for short, the Act). Objections qua maintainability, want of notice and jurisdiction of the civil court were also taken. The trial Court in Suit No.2 framed the following issues:-

- “1. *Whether the plaintiff is the owner in possession of the plot in dispute? OPP*
2. *Whether the civil court has no jurisdiction to entertain and try this suit? OPP*
3. *Whether the boundary wall in question exists since times immemorial? OPP*
4. *Whether the suit in the present form is not maintainable? OPP*
5. *Whether the suit is bad for want of notice under section 396 of the Punjab Municipal corporation Act and under the principle of resjudicata? OPP*
6. *Whether the site in dispute is a public street? OPD*
7. *Whether the site plan filed with the plaint is correct? OPP*
8. *Whether the plaintiff is entitled to the injunction prayed*

for? OPP

9. *Relief.”*

Plaintiff, in support of the evidence in Suit No.2, brought on record five witnesses, whereas the defendants examined six witnesses and brought on record Ex.D1 and Ex.D2.

Mr. Harsh Aggarwal, learned counsel appearing on behalf of the appellants in both the appeals submitted that the judgment and decree of the Lower Appellate Court arising out of decision rendered in Suit No.1 decreeing the suit is wholly preposterous and not sustainable in the eyes of law. Plaintiff miserably failed to prove the ownership as the sale deed has not been proved on record. Jamabandi cannot confer any title. The File Book of 1975 signed by the Deputy Commissioner revealed the ownership of the land of Municipal Corporation. It being a public document, ought not to have been discarded. Inspector of the Corporation visited the site and submitted the report resulting into issuance of a notice under Section 246 of the Act, which was duly replied by the respondent and the remedy, if any, was to file appeal under Section 269 of the Act.

In Suit No.2, it was submitted that respondent-plaintiffs Rajinder Singh and Prem Singh failed to establish the boundaries, which did not tally, with the site plan. In fact, the Corporation, through the evidence brought on record, proved that the land in dispute was built by bricks and it fell within the definition of “public street”. No evidence has been brought on record to establish that the piece of land was accessible to the public for the purpose being within the definition of “Public”. Respondents failed to discharge the onus of proving the title.

The aforementioned arguments were refuted by Mr.Amit Jhanji, learned counsel for respondent No.1 in RSA No.2213 of 1988 that the

judgment and decree of the Lower Appellate Court is perfect and legal and based upon the reading of oral and documentary evidence, which was not noticed by the trial Court. The additional evidence brought on record were the certified copies of the jamabandis for the years 1939-40, 1960-70 and 1974-75 and also judgment of the court of Additional District Judge dated 24.01.1986 rendered in case titled as “Laxmi Narain Vs. Municipal Corporation, wherein the question regarding the title of the land purchased by Laxmi Narain from one of the co-sharers Milap Chand Thaper, the vendor of the plaintiff, was proved. The Municipal Corporation did not rebut the additional evidence and, thus, prayed for dismissal of the appeals.

I have heard the learned counsel for the parties, appraised the paper book, records of the courts below and of the view that the following Substantial Questions of Law arise for determination by this Court in Suit No.1:-

“1) Whether the objection of the appellant-Municipal Corporation in Suit No.1 assailing the title of the plaintiff in the absence of any counter claim is sustainable?

2) Whether the appellant-Municipal Corporation in the absence of any rebuttal evidence to the additional evidence failed to establish the ownership of the plaintiffs over the land?

Whereas, in Suit No.2, the following substantial question arises for determination:-

“Whether the judgments and decrees of the courts below suffer from perversity or illegality?

Coming to the argument in Suit No.1, plaintiff placed on record certified copies of the jamabandies, wherein the ownership of the predecessor-in-interest of the plaintiff had been proved. If at all, there was some doubt, defendants could produce some material to rebut the same. As

per the aforementioned evidence, plaintiff alleged to be owner in possession of the suit property by acquiring the title and in column No.4 of the jamabandi, there was an entry of red ink about the sanction of the mutation of the sale in favour of the plaintiff. The jamabandi for the year 1974-75 reflected the site comprised of 17 marlas purchased by Laxmi Narain from Milap Chand and other co-owners and mutation No.15675 was sanctioned, while remaining 17 marlas was purchased by Om Parkash and mutation bearing No.16424 was sanctioned in his faovur.

On the other hand, through the testimony of DW-1 Parshotam Lal Draftsman and DW-2 Om Parkash Clerk Local Fund Branch, Office of Deputy Commissioner, Jalandhar, the Corporation could not place on record any material or by referring to Ex.D1 and Ex.D2 to establish the ownership of the Municipal Corporation/ Municipal Committee.

Municipal Committee, as per Section 56 of the Act, was required to maintain the record of the properties vested in it. Except the File Book, nothing came on record to establish that the property in dispute was owned by Municipal Committee. Ex.D1 is not the original, but the same was exhibited subject to objections. If at all, there was some truthfulness in the assertion of the Municipal Corporation, nothing prevented it to place on record copy of the acquisition proceedings, if any, conferring the title. An attempt has been made to place on record photocopy of the notice available on a printed form, but it did not connect with the File Book and the khasra plan. There is hardly any force in the submission of Mr. Harsh Aggarwal to form a different opinion than the one arrived at by the Lower Appellate Court in decreeing the suit as the findings of the Lower Appellate Court are based upon the additional evidence which remained unrebutted. Thus, the

Substantial Questions of Law framed in Suit No.1 are answered in favour of the respondent-plaintiff and against the appellant-defendant.

In RSA No.2213 of 1988, Prem Singh DW-1 and Tara Singh DW-2 were examined by the defendant being the residents of the area. However, their evidence did not establish the encroachment, for, alleged demarcation of the encroachment did not see the light of the day. Sarwan Kumar Building Inspector DW-6 did not say that he saw the place between 1947 to 1970. On the contrary, the plaintiff and his neighbours PW-2, PW3 and PW-5 reiterated that the plaintiff had purchased the plot from the vendors, who also were in possession for more than 50/60 years and had been seeing the boundary wall from childhood.

The jurisdiction of the civil court in entertaining the civil suit cannot be ousted by invoking the provisions of the Act. Ex.D1 plan was finalized in 1970 and, therefore, it cannot be basis for supporting the claim of the Corporation that the disputed site was a public street. It is strange that the Corporation had decided to contest the suit for injunction without bringing on record any demarcation report to establish that there was encroachment of the public street.

In view of the aforementioned discussion, the Substantial Question of Law framed in Suit No.2 is answered against the appellant-defendant and in favour of the respondent-plaintiffs.

Resultantly, the appeals stand dismissed.

March 27, 2019
ramesh

(AMIT RAWAL)
JUDGE

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