

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 599 of 1997 (O&M)

Date of decision : 5.12.2019

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Municipal Committee, Karnal through its
Executive Officer/President.

.....Appellant

vs.

Dr. J.K. Pasricha (now deceased) through his LRs

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. C.B. Goel, Advocate for the appellant.

Mr. Kulwant Singh, Advocate for the respondent.

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H. S. Madaan, J. (Oral)

Plaintiff – Dr. J.K. Pasricha had filed a suit for grant of permanent injunction against Municipal Committee, Karnal, challenging notice dated 27.3.1986, issued by defendant Municipal Committee, under Sections 208 and 209 of the Haryana Municipal Act, vide which the plaintiff was required to demolish the boundary wall as shown in the red colour in the site plan attached with the plaint.

On getting notice, the defendant appeared, filed written statement contesting the suit. Issues on merits were framed. On conclusion of trial, Sub Judge 2nd Class, Karnal, vide judgment and decree dated 7.4.1993, decreed the suit of the plaintiff and passed a decree for permanent injunction restraining the defendant from demolishing or in any way interfering with the wall in dispute, as shown in the red colour in the site plan.

Feeling aggrieved, the defendant – Municipal Committee, preferred an appeal before District Judge, Karnal, which was assigned to Additional District Judge, Karnal, who vide judgment and decree dated 7.10.1996, dismissed the appeal, mainly for the reason that the appeal was not maintainable for want of proper resolution of the Municipal Committee for filing the appeal.

Feeling aggrieved, the Municipal Committee has approached this Court, by way of filing regular second appeal, notice of which was given to the plaintiff, who has appeared through counsel.

I have heard learned counsel for the parties, besides going through the record.

I find that the Ist Appellate Court adopted a hyper technical approach in dismissing the appeal filed by the appellant.

Learned counsel for the appellant has contended that a resolution was in fact there, authorizing the Municipal Committee to file an appeal.

It has further been brought to my notice that a specific note

was there in the grounds of appeal filed before the Ist Appellate Court, in that regard. Furthermore, since the plaintiff has filed suit against the defendant Municipal committee through his President, the defendant Committee could have filed the appeal, aggrieved by the order passed by the trial Court. The Ist Appellate Court did not keep in mind the fact that it is always desirable to decide a lis on merits rather than non-suiting the parties on technical grounds. It was more so when the dispute involved was of public interest.

Under the circumstances, I find that the judgment passed by the Ist Appellate Court is not sustainable. The same is set aside and the matter is remanded to learned District Judge, Karnal, with a direction to dispose of the appeal on merits, after hearing learned counsel for the parties. Since the matter relates to the year 1993, Learned District Judge shall make earnest endeavor to dispose it of within three months from the date of receipt of a copy of this order.

Parties through counsel are directed to appear there on 19.12.2019.

Disposed of accordingly.

5.12.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No