

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

1. RSA No.2451 of 1999 (O&M)
Date of decision : 14.01.2019
Hisar Improvement Trust, Hisar
...Appellant

Versus

Sarup Singh
...Respondent

2. RSA No.4132 of 1999 (O&M)
Date of decision : 14.01.2019
Sarup Singh
...Appellant

Versus

Improvement Trust, Hissar
...Respondent

3. RSA No.4372 of 1999 (O&M)
Date of decision : 14.01.2019
Sarup Singh
...Appellant

Versus

Improvement Trust, Hissar
...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Gupta, Advocate for the appellant
(In RSA Nos.4132 and 4372 of 1999)
for respondent (In RSA No.2451 of 1999)

Mr. Ankur Mittal, Advocate for the respondent
(In RSA Nos.4132 and 4372 of 1999)
for the appellant (In RSA No.2451 of 1999)

ANIL KSHETARPAL, J.

CM No.7175-C of 1999 in RSA No.4132 of 1999

For the reasons stated in the application, which is duly supported by an affidavit, delay of 132 days in filing the appeal is condoned.

Accordingly, application is allowed.

CM No.7596-C of 1999 in RSA No.4372 of 1999

For the reasons stated in the application, which is duly supported by an affidavit, delay in refiling the appeal is condoned.

Accordingly, application is allowed.

Main cases

By this judgment, RSA Nos.2451, 4132 and 4372 of 1999 shall stand disposed of as all the appeals are arising from a suit filed by Sarup Singh (plaintiff).

Learned trial Court decided the suit in favour of the plaintiff. However, with respect to the rate of interest, plaintiff filed the appeal whereas defendant-Hisar Improvement Trust challenged the decree passed by the trial Court. Thus, First Appellate Court decided two appeals by a common judgment by modifying the rate of interest. Now these three appeals have been preferred. RSA No.2451 of 1999 has been filed by Hisar Improvement Trust whereas RSA Nos.4132 and 4372 of 1999 have been filed by Sarup Singh (plaintiff).

Learned counsel for the appellant has proposed following substantial questions of law, which are extracted as under:-

“1. Whether the plaintiff/respondent can claim allotment of the land which has been encroached by him on the price on which he was allotted a plot adjacent to the area which has been allotted?”

2. Whether the Civil Court had any jurisdiction to issue directions to the appellant-Trust to allot the encroached area to the plaintiff/respondent, much less at a rate on which he was allotted a plot in the said vicinity?”

Plaintiff was alleged to be in possession of certain area and the Improvement Trust acquired the land. However, plaintiff Sarup Singh is alleged to have made a request to the Deputy Commissioner and it is alleged that it was agreed that Sarup Singh would be allotted a plot from where he can continue his business. According to the plaintiff, a plot measuring approximately 850 square yards was allotted vide allotment letter dated 04.11.1975 at the rate of ₹55/- per square yard. In the allotment letter, Clause No.3 is the relevant Clause, which is extracted as under:-

“The size and area of the plot is approximate and it can vary. In case of any variation in the area of plot the account will be calculated @ mentioned above and the same will be adjusted or paid accordingly.”

It is not in dispute that after the allotment, the Improvement Trust came to a conclusion that area of the plot is 905 square yards. Accordingly, a conveyance deed/sale deed was executed in favour of Sarup Singh with respect to an area measuring 905 square yards vide sale deed dated 30.12.1985. The price for remaining additional area was charged by the Trust and thus, Sarup Singh became owner of plot measuring 905 square yards which bears plot No.603 in Auto Market, Hisar.

However, Sarup Singh filed the present suit for declaration claiming that notice dated 19.08.1986 is illegal, null and void. Defendant contested the suit and pleaded that no doubt, in the allotment letter, it was provided that in case of variation in the size of the plot, plaintiff would be allotted the difference in the size of the plot at the time of actual measurement, however, the Trust pleaded that on measurement, the plot turned out to be 905 square yards and accordingly, the sale deed was executed. It was pleaded that adjoining area towards road which was lying vacant has been encroached upon under the garb of the sale deed and, hence, the notice has been issued.

On appreciation of the evidence, both the Courts have decreed the suit and have gone to the extent of directing the defendant-Trust to sell excess area of plot No.603 at the rate of ₹55/- per square yard, at which the plot was allotted in the year 1975 alongwith interest at the rate of 12% per annum on the price in excess of the area already sold to be calculated from the date of allotment.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

Learned counsel appearing for the appellant-Trust contended that no doubt in the allotment letter dated 04.11.1975, plaintiff was allotted approximate area of 850 square yards and allotment letter provided that in case of any variation in the area of the plot at the time of demarcation, the price will be calculated and same will be adjusted or paid accordingly, however, he submitted that after demarcation, the total area of the plot was

found to be 905 square yards and accordingly, the price was charged and the sale deed was executed. He submitted that in the sale deed which is a subsequent contract between the parties, there was no condition that if there is any variation in the size of the plot, the plaintiff would be entitled to allotment of the excess area. He further submitted that in fact, this additional area measuring 217 square yards is the property of the Improvement Trust which abuts the road and plaintiff Sarup Singh has no right, title or interest on the aforesaid property. He further submitted that plaintiff after execution and registration of the sale deed on 30.12.1985 cannot once again revert back to the allotment letter which stands superseded.

On the other hand, learned counsel for the respondent submitted that the sale deed which has been executed on 30.12.1985 gives not only the size of the plot but also gives the details of the property which is surrounding property in dispute on all four directions. Hence, he submitted that once the boundaries have been specified, the size of the plot would pale into insignificance, and hence, the Courts have rightly directed the Trust to additionally allot this area to the plaintiff.

This Court has considered the submissions of the learned counsel for the parties and evaluated the evidence. In the considered view of this Court, the entire approach of the Courts below was erroneous. The allotment letter dated 04.11.1975 stood superseded by a sale deed which was executed and registered after a period of more than 10 years of the allotment i.e. on 30.12.1985. Learned counsel for the parties do not dispute that in the sale deed, terms of sale were specified and there was no Clause similar to Clause No.3 in the allotment letter, which has been extracted

above. The size of the plot was mentioned as 905 square yards and location of the plot was also identified through details of the properties surrounding the plot in question. In such circumstances, the Courts erred in relying upon the Clause of the allotment letter which stood superseded by a subsequent sale deed.

This matter can also be examined from a different angle. The property undisputedly belongs to Improvement Trust which is a public body. Public body on the northern side carved out a road and left certain area to be vacant area. The public authority cannot be compelled to sell/allot the additional area to the plaintiff. The plaintiff has no right, title or interest over the additional area which is measuring 217 square yards. Still further, no policy of the Improvement Trust for sale of the additional area adjoining the property in dispute has been brought to the notice of the Court.

Apart therefrom, dispute in the present case can be seen from another angle. Plaintiff Sarup Singh after having accepted and signed the sale deed for plot measuring 905 square yards which does not contain any stipulation that on demarcation, if the size of the plot varies, he would be entitled to further allotment, was estopped from claiming that he has right to allotment. Once, the sale deed had been executed for specified area i.e. 905 square yards, Sarup Singh (plaintiff) was not entitled to once again claim additional area.

Argument of learned counsel for the respondent which is the sole reason given by the Courts below to decree the suit of the plaintiff does not appeal to reason in the facts of the present case. No doubt, if there is any

conflict between the size of the plot and the boundaries of the surrounding properties, the boundaries would prevail. However, in the facts of the present case, when towards southern side a road has been mentioned, that cannot be interpreted to hold that till road, entire land irrespective of the area belongs to the plaintiff. No doubt, if there is small variation in the size of the plot and the boundaries, the Courts have been taking a view that the details of the properties which are situated on all the four direction would prevail but this is not the case where such interpretation can be extended.

Keeping in view the aforesaid facts, the substantial questions of law extracted above are answered in favour of Improvement Trust, Hisar. Accordingly, the judgments under appeal are set aside. Suit filed by the plaintiff shall stands dismissed.

Consequently, RSA Nos.2451 of 1999 is allowed and RSA Nos.4132 and 4372 of 1999 are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

14.01.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No