

RSA No. 4153 of 2011 (O&M)

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

RSA No. 4153 of 2011 (O&M)

Date of Decision: November 20, 2019

Municipal Committee, Mandi Dabwali

..... Appellant(s)

Versus

Raja Ram Aggarwal Dharamshala Trust (Regd.), Mandi Dabwali & another

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Jatinder Nagpal, Advocate
for the appellant.

Mr. Jatin Hans, Advocate
for respondent no.1.

Mr. Ashish Yadav, Addl. A.G., Haryana,
counsel for respondent no.2.

LISA GILL, J.

This appeal has been filed by the appellant – Municipal Committee, Mandi Dabwali, which was arrayed as defendant no.1 before the learned trial Court, being aggrieved of judgment and decree dated 15.04.2011, passed by the learned Additional District Judge, Sirsa as well as judgment and decree dated 17.07.2009, passed by the learned Additional Civil Judge (Sr. Division), Dabwali whereby suit filed by the plaintiff was decreed and the defendants were restrained from dispossessing the plaintiff from the suit land.

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Brief facts necessary for adjudication of the case are that the plaintiff – Dharamshala filed a suit for permanent injunction, restraining the defendants from forcibly and illegally interfering in the peaceful and lawful possession of the plaintiff over the shops or building as detailed in the head note of the plaint and also for restraining the defendants from recovery of any rent of the shops or building and admit any person as tenants over the same. It was pleaded that plaintiff – Dharamshala was constructed by Sh. Raja Ram Aggarwal about 60 – 70 years ago and it was the only Dharamshala in Mandi Dabwali at that time. One Radha Krishan Temple was also built by Sh. Raja Ram Aggarwal in the premises of Dharamshala. On the southern side of Dharamshala, vacant area (measuring 40 – 50 feet), belonging to Municipal Committee, Mandi Dabwali (appellant here) was lying unutilized. The management applied to the Municipal Committee for constructing a verandah on the southern side of the Dharamshala in public interest. Request of the management was accepted by the Municipal Committee and vide its resolution no.14 dated 31.07.1969, it was resolved by the Municipal Council to alienate the land measuring 10' x 182' to the plaintiff for a sum of Rs.1,000/-. The approval thereof was sought by Municipal Committee from Deputy Commissioner, Hisar, which was duly accorded by the Deputy Commissioner, Hisar, vide communication no.2350/LF/8126(II) dated 27.10.1969 with a condition that the management will utilize the land only in the form of a verandah. Accordingly the management constructed a verandah over the land measuring 10'x182', after taking possession from defendant no.1. However,

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the said verandah proved to be a permanent nuisance because being an open space on all sides, stray animals used to assemble there. The Municipal Committee, Dabwali had also sanctioned the building plan for construction of a Hospital-cum-Dispensary on the portion of this particular land when it was necessitated to reconstruct it in the year 1994-1995 and also assessed the house tax of these shops over 10' x 182'. It is pleaded that on account of some personal grudge and grievance some tenants in the shops constructed over the land in dispute, namely Gian Chand, Vijay Kumar, Raj Kumar son of Sohan Lal, Raj Kumar son of Bhagwan Dass, Satpal and Ram Sarup filed a Civil Suit No. 330 of 2001, in which they challenged the said alienation of land measuring 10'x182' in favour of the plaintiff. It is pleaded that because of the personal interest of the above said tenants, defendant no.1 – Municipal Committee with a malafide intention and under political pressure passed resolution dated 19.04.2001, whereby it was proposed to cancel earlier resolution No. 14 dated 31.07.1969 for setting aside permanent alienation of land measuring 10' x 182 feet. Defendant no.2 thus passed an order dated 15.02.2002 and consequently defendant no.1 has issued memo nos.317 to 325 on 25.02.2002, which was received by the plaintiff on 02.03.2002. Hence, the suit was filed for restraining the defendants from dispossessing the plaintiff from the suit property and further restraining them from recovering any rent from the tenants in the shops in question.

Defendants contested the suit by filing joint written statement and various preliminary objections regarding maintainability of suit and not approaching the court with clean hands etc. were raised. It is stated that the

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plaintiff is neither a religious nor charitable trust and no accounts had been maintained by the plaintiff. It was admitted that the suit property was alienated vide resolution No.14 dated 31.07.1969, subject to the condition that Dharamshala will construct a verandah only for the welfare and facility of the public but in contravention of the condition, the plaintiff illegally constructed 9 pucca shops for its private income and had let out the same to the various tenants since last more than 20 years and the plaintiff also made illegal and unauthorized construction in the shape of a hospital and other immovable structure over the ground and first floor. It was stated that the resolution no. 14 dated 31.07.1969 has been set aside and resolution dated 09.04.2001 has been passed by the Committee in the public interest, which has been duly approved by the Deputy Commissioner, Sirsa – defendant no.2, who is competent and this action is perfectly legal. Dismissal of the suit was prayed for.

Rejoinder to the written statement was filed by the plaintiff. Following issues were framed by the learned trial Court on the basis of the pleadings:-

1. Whether the land and building measuring 10' x 182'/1820 Sq. feet which is part of Raja Ram Dharamshala Trust building situated at Mandi Dabwali was permanently alienated by defendants for a value of consideration of Rs.1000/- to the plaintiff in the year 1969 ? OPP.
2. Whether the resolution dated 19.04.2001 passed by defendant no.1 together with order dated 15.2.2002 passed by defendant no.2 regarding suspension of resolution no.14 of 1969 is wrong, illegal, void abinitio without jurisdiction, against the principals of natural justice and in effective upon the rights of the plaintiff and is liable to set aside as alleged ? OPP

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3. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP.
4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the plaintiff has no locus standi and no cause of action to file the present suit ? OPD
6. Whether the suit is bad for want of notice under Section 52 of the Haryana Municipal Act, 1973? OPC
7. Relief.

Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case concluded that the plaintiff–Trust was in fact a licensee and the suit property had not been permanently alienated by the Municipal Committee by way of a sale and that the defendants were well within their rights to revoke the license due to violation of the conditions of license as it was specifically mentioned in the resolution dated 31.07.1969 that the land in question shall be used only for construction of a verandah whereas the plaintiff-Trust has raised 9 shops thereon. Learned trial Court concluded that the plaintiff failed to prove resolution No.4 dated 19.04.2001, passed by Municipal Committee, Dabwali and the subsequent order dated 06.02.2002, passed by the Deputy Commissioner, Sirsa to be illegal, null and void and in violation of the principles of natural justice. However, it is held by the learned trial Court that the plaintiff is entitled to the relief of permanent injunction as sought and the defendants were

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restrained from forcibly and illegally interfering in the possession of the plaintiff over the suit property or from recovering rent of the shops and buildings in question or admitting any other person as tenant over the shops and buildings except by following the due process of law.

Appeal was filed by the plaintiff–Trust. Learned Additional District Judge, Sirsa vide impugned judgment dated 15.04.2011 set aside the finding of the learned trial Court to the extent that the plaintiff – Trust was a licensee over the suit property. It is observed that the Municipal Committee, Dabwali clearly wished to permanently alienate the suit property in the year 1969 for a sale consideration of Rs.1,000/-. However, as no sale deed was executed in this regard and no immovable property worth more than Rs.100/- can be transferred by any mode except by way of registered documents, the plaintiff-Trust, it is held, could not be proved to be the lawful owner of the suit property. It is observed that Ex. P1 at best can be taken to be an agreement to sell and the appellant is in possession of the property in part performance of agreement to sell under Section 53-A of the Transfer of Property Act. It is further observed that even if the status of the appellant over the suit property is taken to be that of a licensee, even then under Section 60 of the Indian Easement Act, a license can be revoked by the licensor only if the licensee has not executed a work of permanent character and incurred expense in execution. Notice was taken of the house-tax being imposed by the Municipal Committee on the said shops for the year 1994-1995. Learned Additional District Judge, Sirsa without going into the validity or otherwise of the resolution dated 19.04.2001 and order dated

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15.02.2002, concluded that possession of the suit property cannot be obtained by the respondents without first establishing their right over the suit property. Finding of the learned trial Court on issues no.1 to 3 was modified accordingly. Aggrieved therefrom, present appeal has been filed by the appellant-defendant no.1 – Municipal Council, Dabwali.

Learned counsel for the appellant – Municipal Committee vehemently argues that the land measuring 10' x 182' was never transferred permanently to the plaintiff – Trust by way of a sale. The land was leased out to the plaintiff-Trust for using it as a Verandah for the benefit of the public. However, the plaintiff-Trust raised a hospital-cum-dispensary and 9 shops over the area and is un-authorisedly using the same for deriving income. In this view of the matter, it is stated that the Municipal Committee is well within its right to demolish the illegal construction as well. Resolution dated 09.04.2001 and the subsequent order dated 06.02.2002, were passed in public interest. The plaintiff-respondent is claimed to be in illegal occupation and an encroacher over the Municipal Committee's land. Learned counsel for the appellant seeks to raise the following substantial questions of law for consideration of this Court:-

- i. Whether there is misreading of evidence on record by both the learned Courts below, which has resulted in an infirmity and perversity in the impugned judgments and decrees?
- ii. Whether a license can be cancelled on the violation of terms and conditions mentioned therein?

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It is, thus, prayed that this appeal be allowed and the judgments and decrees of both the learned Courts below be set aside.

I have heard learned counsel for the parties and have gone through the record, which was requisitioned.

It is a matter of record that the land measuring 10'x182' belonged to the Municipal Committee, Mandi Dabwali. The plaintiff-Dharamshala raised construction of the hospital-cum-dispensary and shops, 60 to 70 years prior to the filing of the suit. It is further a matter of record that a request was made by the management of the Dharamshala to the Municipal Committee, Mandi Dabwali for handing over a vacant piece of land owned by Municipal Committee, Mandi Dabwali measuring about 40 to 50 feet wide for construction of a verandah for the pilgrims/visitors. This request of the management of the Dharamshala was accepted by the Municipal Committee, Mandi Dabwali and a resolution No. 14 dated 31.07.1969 Ex.P1 was passed. It was resolved by the Municipal Committee, Mandi Dabwali to alienate the land measuring 10' x 182' to the plaintiff for a sum of Rs.1,000/-. Furthermore, approval regarding the resolution and in regard to alienation of the land was obtained by the Municipal Committee from the Deputy Commissioner, Hisar on 27.10.1969. The then Deputy Commissioner, Hisar imposed a condition that the management of the Dharamshala would utilize this land for construction of the verandah, which indeed was constructed. However, ultimately a hospital-cum-dispensary as well as 9 shops were constructed over this area and the rental used for public charity.

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Learned counsel for the appellant is unable to deny that the Municipal Committee, Mandi Dabwali itself sanctioned the building plans for construction of hospital and dispensary on a portion of the land in the year 1994-1995. The shops which were raised on the land measuring 10' x 182' were duly assessed for house-tax by the Municipal Committee, Mandi Dabwali, which was admittedly being deposited by the plaintiff-Dharamshala.

The intention of the Municipal Committee to permanently alienate the suit property is apparent from the resolution dated 31.07.1969, coupled with Ex.P-2 i.e. the order passed by the Deputy Commissioner, Hisar. There is no clause as to the consequence of the suit property reverting to the Municipal Committee in case the Verandah is not used for the benefit of the public or for some other purposes. It is apparent from a perusal of the record that the Municipal Committee, Mandi Dabwali was very much in the knowledge of the existence of the shops being constructed, at least since the year 1994-1995, especially as it was realizing the house-tax therefrom. Learned trial Court has termed the plaintiff-Dharamshala to be a licensee without considering the import of the intention of the Municipal Committee as reflected in the resolution Ex.P-1, which was duly approved by the Deputy Commissioner, Sirsa. The Municipal Committee, Mandi Dabwali vide resolution dated 19.04.2001, passed a resolution proposing to cancel resolution No. 14 dated 31.07.1969, which was approved by the Deputy Commissioner, Sirsa on 15.02.2002. Learned Additional District Judge, Sirsa has rightly observed that rescinding of the earlier resolution No.14

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dated 31.07.1969 in the manner as aforesaid is impermissible. It has been rightly held by the learned Additional District Judge, Sirsa that the respondents need to be restrained from dispossessing the appellant from the suit land forcibly and illegally without first establishing their right over the suit property. It is correctly held that no hearing what-so-ever was provided to the plaintiff-Dharamshala by the Municipal Committee, Mandi Dabwali before rescinding resolution No. 14 dated 31.07.1969. Though the question of the treatment of resolution dated 31.07.1969 either as a license or an agreement to sell is a debatable question, the ultimate conclusion of the learned Additional District Judge, Sirsa is correct in as-much-as it is held that possession of the suit property cannot be obtained by the defendants from the plaintiff-Dharamshala without first establishing their right/title over the suit property and the findings of the learned trial Court on issues no.1 to 3 were rightly modified. It is again to be noted that the plaintiff-Dharamshala in this case had sought the relief of permanent injunction against the defendant-Municipal Council. Learned Additional District Judge has correctly proceeded to set aside judgment and decree dated 15.04.2011, passed by the learned trial Court to the extent as noted.

There is no illegality, infirmity or perversity in the impugned judgment and decree dated 15.04.2011, passed by the learned Additional District Judge, Sirsa, which calls for any interference by this Court in second appeal. The questions of law sought to be raised by learned counsel for the appellant are thus answered against it and in favour of the plaintiff-Dharamshala.

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No other argument has been raised.

Judgment and decree dated 15.04.2011, passed by the learned
Additional District Judge, Sirsa is thus upheld to the extent as above.

Appeal is accordingly dismissed with no order as to costs.

November 20, 2019.

Sunil

**(LISA GILL)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No