

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2290-2013 (O&M)

Date of decision: 22.08.2019

Municipal Corporation, Gurgaon

...Appellant

Versus

Dushyant Kumar and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. A.K. Bura, Advocate,
for the appellant.

Mr. Amit Jain, Advocate,
for respondent No.1.

Mr. Rajesh Gaur, Addl. A.G., Haryana
for respondents No.2 & 3.

JAISHREE THAKUR, J.

1. The appellant seeks to challenge the judgment and decree dated 23.11.2010 passed by Civil Judge (Jr. Divn.), Gurgaon (now Gurugram) whereby suit of the respondent (respondent No.1 herein) was decreed and the subsequent judgment and decree dated 12.03.2013 passed by the Addl. District Judge, Gurgaon dismissing the appeal filed.

2. A few brief facts that need to be noted are that respondent No.1- (henceforth called 'the respondent') filed a suit seeking declaration with permanent injunction alleging that one Raja Rati Ram son of Lala Munshi

Lal Jain was owner of land comprised in Khasra No. 48, 49, 51, 52, 56 and 57 situated within the revenue estate of Hidyatpur Chawani, Tehsil and District Gurgaon. Out of the said land, a plot measuring 250 Sq. yards was purchased by the respondent for a valuable consideration of ₹ 1,000/- vide registered sale deed dated 07.12.1964. Since its purchase he was owner in possession of the suit property. It was further alleged that in the year 2002, the respondent got prepared a building site plan in conformity with law and bye laws and requested the officials of appellant No.1 (henceforth called 'the appellant') to sanction the said building site plan on receipt of required fee/ charges. However, no action on the request of the respondent was taken. Thus, the respondent dispatched the building site plan along with requisite fees vide bank draft by speed post to appellant No.1. The same were duly received by the appellant. However, the appellant refused to sanction the building site plan filed by the respondent vide order dated 19.08.2002 by alleging that the site of respondent falls within open space of Town Planning Scheme No.3 and proposed construction by the respondent would lead to encroachment upon that open space. Against the said order dated 19.08.2002, an appeal was filed before Deputy Commissioner, Gurgaon. The said appeal was also dismissed on similar grounds vide order dated 26.11.2002. Resultantly a suit was filed seeking a declaration that orders dated 19.08.2002 and 26.11.2002 respectively vide which application of respondent for sanctioning the building site plan was rejected, be declared illegal, null and void and appellant No.1 be directed to sanction the building plan submitted by the respondent in respect of suit property. It was further prayed that defendants be restrained from taking forcible possession

of suit property from the respondent.

3. On notice, appellantNo.1 put in an appearance and filed written statement by taking various preliminary objections viz the respondent has no locus standi and cause of action to file the suit; suit being time barred and improper valuation of suit by the respondent for the purpose of court fee and jurisdiction. On merits, it was denied that Raja Rati Ram was owner of land comprised in Khasra No. 48, 49, 51, 52, 56 and 57 situated within the revenue estate of Hidyatpur Chawani, Tehsil and District Gurgaon and he sold the suit property to the respondent vide sale deed dated 07.12.1964 rather it was stated that the plot upon which respondent was staking the claim, was open space as per Scheme No.3 which was fully implemented within the stipulated period by carving out the roads, open space, parks etc. under the law. The appellant was owner in possession of the suit land. Hence, the building site plan filed by the respondent along with fees was rejected by appellantNo.1 on the grounds that the same has not been submitted according to mandatory procedure. It was further alleged that the appeal filed by the respondent against order dated 19.08.2002 was dismissed by appellant No.1 on similar grounds. It was admitted that the legal notice sent by the respondent dated 31.03.2003 was received. It was submitted that reply to the said legal notice was sent by appellantNo.1 vide memo No. 3550 dated 28.05.2003. On these grounds, prayer for dismissal of suit was made.

4. Replication was filed while reiterating the averments made in the plaint and controverting the averments made in the written statement. From the pleadings of the parties, learned trial Court framed the following

issues :-

- “1. *Whether Raja Rati Ram was owner of plot in dispute and sold the same to respondent vide sale deed dated 07.12.1964 as alleged? OPP*
2. *Whether respondent is owner in possession of suit property described in para no.1 of plaint ?OPP*
3. *Whether order dated 19.08.2002 passed by appellantNo.1 and order dated 26.11.2002 passed by appellantNo.2 are void, incorrect, illegal and liable to be set aside as alleged ?OPP*
4. *Whether there is no cause of action to file the present suit? OPD*
5. *Whether respondent is estopped from filing the present suit by his own act and conduct?OPD*
6. *Whether respondent has no locus standi to file the present suit?OPD*
7. *Whether suit is bad for non-joinder of parties?OPD*
8. *Whether suit has been properly valued for the purpose of court fees?OPD*
9. *Whether the suit property is open space as per TP scheme No.3 of Gurgaon as alleged ?OPD*
10. *Relief.”*

5. In support of his case respondent-respondent No.1 examined eight witnesses and proved various documents Ex. P-1 to P-24. On the other hand, appellant examined six witnesses and proved various documents Ex. D-1 to D-14 etc. Thereafter the appellants' evidence was closed by Court order as they failed to conclude their evidence despite availing several opportunities including last opportunity. No rebuttal evidence was led.

6. The trial Court on appreciation of the evidence, decreed the suit of the

respondent and the orders dated 19.08.2002 and 26.11.2002 passed by the appellant were declared illegal, null and void. Furthermore the appellant was directed to sanction the site plan of the respondent in accordance with the provisions of law. The appeal preferred by the appellant herein too has been dismissed by the lower Appellate Court while upholding the judgment and decree passed by the trial Court.

7. Learned counsel appearing on behalf of the appellant argues that the building plan cannot be sanctioned as had been held vide the orders dated 19.08.2002 and 26.11.2002. It is contended that the land purchased by the respondent is being used as path by the residents and therefore vests with the Municipal Corporation. It is also argued that the land which is an open and vacant land falls within the Town Planning Scheme No. 3 which had been formulated in order to control unauthorized construction and develop the city in a planned manner, hence no permission can be given to construct while also arguing that the orders passed by the appellant i.e orders dated 19.08.2002 and 26.11.2002 would act as res judicata having already decided the issue between the parties.

8. Per contra, the counsel for the respondent argues that both the courts below have appreciated the evidence and have decreed the suit of the respondent which orders are legal and do not warrant and interference.

9. There is no dispute that the land initially belonged to Raja Rati Ram who executed a sale deed in favour of the respondent which is Ex P-10. The sale deed has duly been proved by PW4 Bhupinder Singh, PW-5 Satya Narayan Aggarwal, PW-6 Harish Kumar and PW-7 B.B Sharma. The argument that the land falls within Town Planning Scheme no. 3 has been

rejected by both the courts below by taking into consideration the judgment rendered in Civil Appeal No 34 of 25.9.1986 titled Municipal Committee Vs Sharu Ram, where in similar circumstances the first Appellate Court had noted that Town Planning Scheme no. 3 had never come into existence nor had it been acted upon. No appeal has been filed against the said judgment, nor has the counsel for the appellant been able to show that the Town Planning Scheme no. 3 had ever been implemented.

10. It is also noted that there is no evidence on the record that the appellant herein has taken over the land and under which provision of law. Merely by stating that the plot is a vacant piece of land as per the record relating to sanctioning of the Scheme and it vests with the appellant would not suffice when there is a sale deed on the record Ex P-10 in favour of the respondent duly executed by the owner of the land. Both the witnesses as produced by the appellant i.e DW-5 and DW-6 have admitted in the cross-examination that they have not seen any document vesting the land with the Municipal Corporation. Based on the evidence, the Courts below rightly came to the conclusion that the Town Planning Scheme no. 3 was never implemented nor is there any record showing the land vested with the Municipal Corporation.

11. The learned counsel for the appellant has failed to point out any jurisdictional error or patent illegality apparent on the record of the case in either of the impugned judgments passed by the learned Courts below. He also failed to put into service any substantive argument, so as to convince this Court to take a different view than the one taken by the learned Courts below. The learned Courts below have recorded concurrent findings of

facts. Thus, there is no scope for interference at the hands of this Court, while exercising its jurisdiction under Section 100 CPC because there is no question of law, much less substantial question of law thereof, found involved in the instant appeal.

12. The Regular Second appeal is dismissed being without merit.

22.08.2019

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes.

Whether reportable

No.