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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-50-2016 (O&M)
Date of decision : 12.03.2019

Mukesh Kumar and others

... Appellants

Versus

Municipal Council Thanesar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. Nitish Garg, Advocate and
Ms. Arzoo B. Grewal, Advocate
for the appellants.

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AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the Courts below, whereby the suit for mandatory injunction with consequent relief of permanent injunction, has been dismissed by the trial Court and affirmed in appeal.

The present appeal is accompanied by an application seeking condonation of delay of 670 days in filing. The reasons assigned in the application are enumerated in para No.2, 4, 6 and 7.

On perusal of the paras, it is evident that all the appellants-plaintiffs jointly filed the appeals against the judgment and decree of the trial Court, dismissing suits and then, in order to over come the rigours of limitation, have attempted to put the blame on plaintiff No.1 regarding decision of the appeal. The lower Appellate Court dismissed the appeal on

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11.9.2013, but the assertions reveal that inquiry was made from plaintiff No.1 only in the month of September 2015. Once the plaintiffs have collectively filed the appeal, cannot be permitted to indulge into blame game on co-plaintiff as they have to be diligent in pursuing the legal rights. The approach of the applicant/appellants, thus, is totally tardy and lackadaisical.

On merits, the plaintiffs instituted the suit for mandatory and permanent injunction, directing the defendants to remove and demolish the illegal and unauthorized construction raised on the encroached portion of the land as mentioned in letters ABEF in the site plan and also to hand over the possession by removing fours wall raised by them, on the premise that the plaintiffs are successor-in-interest of Smt. Maya Devi, daughter of Smt. Ashrafi Devi, who was owner in possession of land measuring 1 kanals 16 marlas comprised in Khewat No.2293/2539, Khatoni No.2621, Rect No.201, Khasra No.3/2(0-17), 4/1/1/2 (0-16), 4/1/1/3 (0-3), kittas-3, situated at Darra Kalan, Thanesar. It was alleged that on demise of Maya Devi, the plaintiffs and four daughters acquired the ownership by way of natural succession. However, since they were apprehending the threat at the instance of the defendants, instituted the suit on 20.01.2005, but few days thereafter, the defendants encroached the part of the portion shown in letters ABCDEF and constructed the boundary wall 4 feet-3 inches in height.

The defendants opposed the suit and alleged that Ashrafi Devi and Savitri Devi, were owner in possession of the land except the land of parks and streets in Rect. No.201/2/2, at the time of preparation of Town Planning Scheme No.5 (in short 'T.P. No.5'). No objection regarding 25% of the land left for park and road was ever raised, since 1974 when the claim was sanctioned by the Government vide Drawing No.DTP (KU)46/74, in

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Jyoti Nagar, Kurukshetra, permitting the defendants to take 25% of the total land. The road left by the plaintiffs in khasra number had already been made pucca with concrete and cemented road for the last 29 years.

Both the parties led evidence in support of their respective cases.

Mr. Vikas Bahl, learned Senior Counsel assisted by Mr. Nitish Garg, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the plea of the defendants of acquiring 25% of the land for parks, without any compensation, is no longer a good act, in view of the law laid down by Hon'ble the Supreme Court in ***"Yogendra Pal V/s Municipality, Bhatinda" 1994 (3) RRR 118; 1994 (6) SCC 709***, as was held to be violation of Article 300-A of the Constitution of India and the provisions of the Punjab Municipal Act. Once the ownership of the plaintiffs was not denied, no explanation cogent and reasonable except tendering the marked documents, has come on record, to establish the possession on the construction of the concrete walls. The Local Commissioner demarcated khasra No.201/4/1, 201/3/2 and ignored to demarcate khasra No.4/1/1/2 and 4/1/1/3. The objection, in this regard, was filed, but the same has not been dealt with and therefore, there is abdication.

I have heard learned counsel for the appellants-plaintiffs appraised the paper book and of the view that the suit, as such, was not maintainable in the absence of laying challenge to the TP Scheme. The provisions of Section 39 of the Specific Relief Act, empowers the person to seek the implementation of breach of the obligations. There was no breach of obligation by the defendants, enabling the plaintiffs to invoke the aforementioned provisions. The onus heavily laid upon the plaintiffs to

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establish that they had been in possession since long and to belie the assertions regarding construction of the road for the last 29 years, but no such evidence has been led. All these factors weighed in the mind of the Courts below, while declining the relief, aforementioned.

The application seeking condonation of delay of 670 days in filing the appeal is bereft of any plausible explanation.

Accordingly, the present second appeal is dismissed on the ground of limitation as well as on merits.

12.03.2019 **(AMIT RAWAL)**
Yogesh Sharma **JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**