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

RSA No. 6088 of 2016

Date of Decision: September 23, 2019

Krishan Lal and others

..... Appellant(s)

Versus

Municipal Committee and another

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. S.S. Kasan, Advocate
for the appellants.

LISA GILL, J.

Appellant-plaintiffs are aggrieved of the judgment and decree dated 13.05.2016, passed by the learned Additional District Judge, Kaithal as well as judgment and decree dated 28.10.2015, passed by the learned Civil Judge (Junior Division), Guhla, whereby suit filed by the appellant has been dismissed.

The appellant is one of the plaintiffs who had filed a suit for mandatory and permanent injunction and recovery of damages from the respondent-Municipal Committee, Cheeka. Plaintiff Punna Ram – predecessor in interest of the present appellants along with Miyan Singh son of Kehar Singh arrayed as respondent no.2 in this case had filed the said suit. The learned trial Court vide judgment and decree dated 28.10.2015 dismissed the suit. Appeal preferred by the present appellants i.e. legal representatives of Punna Ram – plaintiff no.2 was dismissed by the learned Additional District Judge, Kauthal, vide judgment and decree 13.05.2016.

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In the plaint it is pleaded that the present appellants along with Miyan Singh are owners in possession of the shops as described in the plaint. It is pleaded that the shops were constructed in the year 1986 after submission of the site plan before the Municipal Committee, Cheeka, alongwith deposit of the amount of Rs.1,222.86/-. On 02.5.1986 an endorsement to the said effect was claimed to have been made on the application and a report given by Junior Engineer, Municipal Committee, Cheeka. The documents as required by the defendant were submitted by the plaintiffs for sanction of the site plan. It is further pleaded that permission to construct on the site was given to the plaintiffs by the Administrator/Secretary of the Municipal Committee, Cheeka on 01.07.1986. The shops were then constructed by the plaintiffs and shutters were put on the same. It is further pleaded that the plaintiffs being owners in possession of the shop were using the same for their own purposes for more than 26 years continuously. However, the defendant in the absence of the plaintiffs, came to the spot on 06.11.2012 and front portion of the shops was forcibly and illegally broken. No notice under Section 208 and 181 of the Haryana Municipal Act was ever served upon them neither any notice issued before the demolition. It is claimed that the defendant caused grave damage to the plaintiffs' property and are threatening to raise construction on the property. Despite requests the shops were not restored to the original shape neither any damages were paid. Hence, the suit was filed.

Defendant – Municipal Committee, Cheeka resisted the suit. Various preliminary objections were raised. It is stated that the plaintiffs

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were neither the owners nor in possession of the suit property nor permission was ever granted to the plaintiffs for raising the so called construction. It is stated that no construction of the shops was raised, therefore, question of putting shutters does not arise. Dismissal of the suit was prayed for.

Following issues were framed by the learned trial Court on the basis of the pleadings:-

1. Whether the plaintiff is entitled to the decree for mandatory injunction, as prayed for? OPP.
2. Whether the plaintiff is entitled to decree for permanent injunction as prayed for? OPP
3. Whether suit is maintainable? OPD.
4. Whether the suit is bad for non-compliance of notice under Section 52 of Municipal Act? OPD
5. 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 plaintiffs failed to prove their ownership over the property in question or that they were in possession of the suit property. Accordingly, suit filed by the plaintiffs was dismissed by the learned Civil Judge (Jr. Division), Guhla vide impugned judgment and decree dated 28.10.2015.

Admittedly, Miyan Singh son of Kehar Singh did not file any appeal. Appeal was filed by the legal representatives of Punna Ram, who

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had since passed away. The said appeal was dismissed by the learned Additional District Judge, Kaithal vide the impugned judgment and decree dated 13.05.2016. Aggrieved therefrom, present appeal has been filed by the appellants.

Learned counsel for the appellants submits that Mam Raj PW-2, who was posted as J.E. in the Municipal Committee, Pehowa in 1986, holding the additional charge of Municipal Committee, Cheeka has proved on record his report Ex.PW2/A and Ex.PW2/B wherein recommendation/permission had been given to the plaintiffs/appellants to raise the construction. Therefore, it is proved that construction was raised by the plaintiffs/appellants over the property. It is contended that even if the plaintiffs are not proved to be the owners, it has come on record that they had raised the construction and the same could not have been demolished without following due process of law. It is, thus, prayed that this appeal be allowed and judgments and decrees of both the Courts below be set aside.

I have heard learned counsel for the appellants at length and have gone through the file as well as photocopy of some of the record produced in Court today.

Learned counsel for the appellants is unable to deny that the plaintiffs were unable to prove their ownership over the suit property. The plaintiff – Miyan Singh while deposing as PW-1 was not able to furnish any document indicating their title to the suit property. He also admitted not being in possession of any sanctioned site plan in regard to the suit property. It is further a matter of record that even PW-2 Mam Raj, Junior Engineer,

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Municipal Committee, Cheeka has admitted that the plaintiffs were asked to append the documents reflecting their ownership. In response thereto Jamabandis pertaining to the suit property were statedly attached. However, it is a matter of record that the plaintiffs are not recorded as owners of the suit property in the said Jamabandis and furthermore even in the column of possession, the plaintiffs do not find any mention. That being said in respect to the title of the plaintiffs to the property, it is a matter of record that even the possession of the plaintiffs over the suit property is not proved by any cogent evidence on record. As noticed above, plaintiffs are not even reflected to be the persons in possession of the suit property in the jamabandis referred to as above. It is not denied by learned counsel for the appellants that Yad Ram who is recorded to be in occupation of the property over which the construction was raised, is a co-villager and is not related to the plaintiffs and neither there is anything on record to show that possessory rights were purchased by the plaintiffs.

PW1 Miyan Singh has admitted that no construction was raised at the site. It is rightly held by learned Courts below that no evidence has been led to prove the raising of construction over the suit property. Testimony of PW2 Mam Raj or of PW-3 Jai Bhagwan, Draftsman besides PW-4 Rakesh Verma, Draftsman is of no avail to the present appellants. PW2 Mam Raj was unable to point out as to who had given the application for sanction of the site plan for the proposed construction. Though he has admitted the reports Ex.PW2/A and Ex.PW2/B, at the same time, PW2 has candidly admitted that the plaintiffs were asked to furnish their documents

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qua their ownership. In the original record, reports Ex.PW2/A and Ex.PW2/B were submitted by him. Testimonies of PW3 and PW4 have been discussed thoroughly by both the Courts below. PW1 Miyan Singh could not give the exact details of the suit property. He could not even reveal whether the suit property is part of Killa No. 13 and Rectangle No.31. He stated that they were in possession for the last 5 or 6 years and that no construction was raised thereon. Clearly the plaintiffs have failed to prove not only their ownership but also their possession over the suit property. Learned trial Court has rightly observed that it has not been even shown as to how the Municipal Committee demolished their shops. As per the available record i.e. Akshajra Ex.DB and Jamabandi for the year 2010-2011 Ex.DA do not support the case of the plaintiffs.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal. There is no illegality, infirmity or perversity in the impugned judgment and decree dated 13.05.2016, passed by the learned Additional District Judge, Kaithal as well as judgment and decree dated 28.10.2015, passed by the learned Civil Judge (Junior Division), Guhla, which calls for any interference by this Court in second appeal.

No other argument has been raised.

Judgment and decree dated 13.05.2016, passed by the learned Additional District Judge, Kaithal as well as judgment and decree dated

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28.10.2015, passed by the learned Civil Judge (Junior Division), Guhla are upheld.

Accordingly, this appeal is dismissed with no order as to costs.

September 23, 2019.

Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No