IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) RSA-926-2015(O&M)

Shiv Mohan Sharma

...Appellant

Versus

Ashok Kumar Duggal(since deceased) through his LRs and others

...Respondents

(2) RSA-5760-2014(O&M)

Shiv Mohan Sharma and others

...Appellants

Versus

Ashok Kumar Duggal(since deceased) through his LRs and others

...Respondents

Date of Decision:-16.10.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sumeet Mahajan, Sr. Advocate with
Mr.Amit Kohar, Advocate
for the appellants in both appeals.

Mr.Promila Nain, Advocate
for respondents No.1(i)(ii)(iii) and 2 in RSA-926-2015
and for respondent No.4 in RSA-5760-2014.

Ms.Pinki Banwala, Advocate for
Mr.Harsh Aggarwal, Advocate
for respondent-MC, Ludhiana.

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H.S. MADAAN, J.

By this judgment, I shall dispose of two RSAs i.e. RSA-926-2015 filed on behalf of appellant Shiv Mohan Sharma and RSA-5760-2014 filed on behalf of appellants Shiv Mohan Sharma and others.

In nutshell, facts of the case are that plaintiffs Ashok Kumar Duggal, aged about 54 years and his younger brother Surinder Kumar Duggal, aged about 45 years, residents of House No.B-XXXII 447/2/4, Street No.2, Sartaj Nagar, Noorwala Road, Ludhiana had brought a suit bearing C.S. No.377 of 7.3.2005 against Municipal Corporation, Ludhiana (hereinafter referred to as Corporation) seeking a decree for permanent injunction, restraining the defendant, its officials, employees etc. from changing the nature or from causing any damage/demolition to the existing construction of the house shown as red in the site plan attached with the plaint comprised in khasra No.74, Khata No.395/413 as per jamabandi for the year 1991-92 situated within the revenue estate of village Taraf Sekhewal, Tehsil and District Ludhiana and from committing any act detrimental to the interest of the plaintiffs to the abovesaid property.

As per the version of the plaintiffs, they are owners in possession of the suit property inasmuch as their father Sh.Singh Pal Duggal had purchased the property having area 194 square yards

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with specific boundaries vide a registered sale deed dated 4.12.1994; after his death, the plaintiffs have inherited the property and mutation has been sanctioned in their favour; the house was entered in the name of father of the plaintiffs in the municipal record and it is being assessed to house tax since the year 1994; the electricity connection has also been got installed in the house and plaintiffs are paying the electricity bill regularly; the plaintiffs are residing in that house doing the petty job of hosiery and fabrication under the name and style of M/s Duggal Fabricators; the Municipal Corporation had issued licence to the plaintiffs from time to time; the plaintiffs have got installed commercial electricity connection in the house for running the said business; that the Food & Supply Department had also issued ration card to the plaintiffs; the plaintiffs had also purchased LIC policies at that address; however the officials of Municipal Corporation at the instance of certain persons, namely, Shiv Mohan Sharma, Ravinder Sharma, Jatinder Sharma, Narinder Sharma and Usha Sharma started harassing the plaintiffs in the year 1999 causing interference in the possession and use of house by the plaintiffs; as such the plaintiffs filed a Civil Suit titled 'Ashok Kumar Versus Shiv Mohan Sharma', which was decreed and defendants in that suit were restrained from causing interference into the peaceful working of the plaintiffs in the suit property vide judgment/decree dated 1.4.2003; Shiv Mohan Sharma etc. then approached defendant – Corporation,

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which issued threats to demolish the house in question and to do illegal activities; that a day prior to filing of the suit, the officials of defendant – Corporation came to the suit property and tried to change the nature of the house in question and threatened to demolish the same, not listening to the requests of the plaintiffs not to do so. Hence the plaintiffs had filed the suit in question in the Court of law.

On getting notice, the defendant – corporation appeared and filed a written statement contesting the suit raising preliminary objections that no notice under Section 396 of the PMC Act was served upon the defendant before filing of the suit, therefore, the suit was not maintainable; that the plaintiffs had violated the provisions of Sections 269, 270 of the said Act by raising illegal construction; the plaintiffs had been served notices under those provisions on 3.3.2000, notices were duly received by them and they filed reply to the same on 30.3.2000 by making vague allegations; that the construction raised illegally was liable to be demolished; that the suit was not maintainable; that the plaintiffs had not approached the Court with clean hands; that the plaintiffs are using the property for commercial purposes without getting the required licence from the defendant; that Shiv Mohan Sharma etc. are residing in the neighbourhood of the plaintiffs; that the plaintiffs had filed the suit just to avoid the legal action. On merits, the defendant controverted the assertions in the plaint and reiterated the stand taken in the

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preliminary objections. According to the defendant, the factory being run by the plaintiffs in their house is causing great difficulty to the neighbours in their day to day life. The defendant contended that it would take action against the plaintiffs regarding illegal construction and challaned the plaintiffs under Section 343 of the Act for running the business without licence and no cause of action arose to the plaintiffs to bring the suit. Refuting the remaining allegations in the plaint, the defendant prayed for dismissal of the suit.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP.
2. Whether the suit is maintainable in the present form? OPP.
3. Whether the suit is bad for want of notice U/S 396 of PMC Act? OPD.
4. Relief.

In order to prove their case, the plaintiffs had examined Sh.Balraj Kumar as PW1, Sh.Ashok Kumar as PW2 and Sh.Gurvinder Singh as PW3 besides tendering certain documents.

On the other hand, the defendant had examined Sh.Gurdeep Singh as DW1.

After hearing arguments, the trial Court decided issue No.1 observing that the suit property is not commercial building but

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a residential one and plaintiffs have no right to run any commercial business or to do any work of fabrication therein; that such act of the plaintiffs causes nuisance to the neighbours, in that way, the plaintiffs are doing the commercial business and manufacturing business illegally in this house to which they have got no right and defendant - Corporation has got right to stop the illegal working of the plaintiffs in the house in question; the neighbours have got right to restrain the plaintiffs from carrying on the business or fabrication activities in the suit property and the plaintiff can be prosecuted under criminal law also for doing this commercial business and fabrication work in the suit property by making the nights of neighbours sleepless, however, the defendant has to adopt the legal course for stopping the commercial business and manufacturing business run by the plaintiffs in the suit property. As such the trial Court found that the plaintiffs had a right to get injunction to the effect that the defendant can stop the commercial business and fabrication business of plaintiffs in the suit property and can demolish the suit property by taking action under the provisions of PMC Act. Thus, the issue was decided partly in favour of the plaintiff. Issue No.2 was decided partly in favour of the plaintiff observing that suit is maintainable to the extent that defendant can take action against the plaintiffs regarding the suit property in accordance with the provisions of PMC Act, 1976. Issue No.3 was

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decided observing that no notice under Section 396 of PMC Act was required since it was a case for grant of permanent injunction.

Resultantly, suit of the plaintiffs was decreed to the extent that the defendant shall demolish the suit property and shall stop the plaintiffs from carrying on the business and fabrication activities into the suit property by adopting the provisions of PMC Act, 1976. This was so done vide judgment and decree dated 19.1.2010.

The plaintiffs were aggrieved by the said judgment and decree and they had filed an appeal before the Court of District Judge, Ludhiana, which was assigned to Additional District Judge, Ludhiana, who vide judgment and decree dated 18.11.2014 accepted the appeal with the modification and clarification to the effect that respondent - Corporation is permitted to issue a fresh show cause notice specifically stating as to which part of the construction the appellants have raised illegally without prior sanction, which according to respondent - Corporation is liable to be demolished.

It may be mentioned here that one Shiv Mohan Sharma had filed an application under Order 1 Rule 10 CPC for being impleaded as a party in the appeal. However, that application was dismissed vide order dated 18.11.2014 passed by Additional District Judge, Ludhiana.

Feeling dissatisfied with the judgment and decree passed

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by learned Additional District Judge, Ludhiana and order dismissing his application under Order 1 Rule 10 CPC Shiv Mohan Sharma has preferred **RSA-926-2015** in this Court, notice of which was issued to the respondents, who have appeared through counsel.

It may be mentioned here that another Civil Suit bearing No.437/21.12.1999 had been filed by plaintiffs Ashok Kumar Duggal and his younger brother Surinder Kumar Duggal against the defendants Shiv Mohan Sharma, Ravinder Sharma, Jatinder Sharma, Narinder Sharma (brothers), Smt.Usha Sharma wife of Shiv Mohan Sharma as well as Municipal Corporation, Ludhiana through its Commissioner seeking a decree for permanent injunction restraining the defendants and persons claiming under them from interfering in the peaceful possession of the plaintiffs and from causing to interfere in the peaceful possession and use of the suit property almost on the same pleadings as mentioned above.

On notice the defendants had appeared. The private defendants had filed a joint written statement, whereas defendant – corporation had come up with a separate written statement.

In the joint written statement filed by the private defendants, they took up various legal objections, on merits contending that the plaintiffs are using the property solely for commercial purposes; that the alleged electricity connection is a S.P. Connection, which is granted only to the industries and not for the

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residential purposes; that the plaintiffs might have obtained a licence from defendant No.6 in connivance with its officials. It is further submitted that the answering defendants are living adjoining to the property of the plaintiffs; that such defendants had made a complaint to defendant No.6 regarding the nuisance being caused by the plaintiffs to them and for non renewing of their licence any further. According to such defendants, they had no objection, if the plaintiffs kept their residence in the adjoining house and the entire machinery, generator set and hosiery goods were removed from the said premises. Further, the plaintiffs had installed more than 11 machines in the property alleged to be owned by them and they have obtained 15 KW power connection besides installing a generator set of capacity of 15 KVA; that defendant No.1 is a patient of hypertension and blood pressure, while defendant No.3 is also a Neuro patient and both of them require constant treatment of doctors, who advised complete rest to them and to avoid any exertion and nuisance; that the running of the machinery and generator produce vibrations in the western wall of the house of such defendants. The defendants No.1 to 3 had also filed a counter claim against the plaintiffs on similar lines praying for grant of decree restraining the plaintiffs from using property in suit for commercial/industrial purpose and from running the machinery of hosiery installed in the said premises being the source of actionable nuisance, further praying for passing of a decree

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for recovery of Rs.20,000/- against the defendants being the amount required by the counter claimants for repairing the damage caused by running of the machinery and generator in the property.

Defendant No.6 had filed written statement contesting the suit taking almost the same stand in the written statement filed in the connected suit detailed above.

The plaintiffs had filed separate replications controverting the allegations in the written statements whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP.
2. Whether the suit is not maintainable? OPD.
3. Whether the defendants/counter claimants are entitled to permanent injunction as prayed for? OP Counter claimants.
4. Whether counter claimants are also entitled for the recovery of Rs.20,000/- as alleged? OP Counter Claimants.
5. Whether the counter claim is false and frivolous? OPP.
6. Whether counter claimant has no cause of action? OPP.
7. Relief.

Both the parties led evidence in respect of their claims.

After hearing the learned counsel for the parties, the trial

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Court decided issues Nos.1 and 3 in favour of the plaintiffs and against the defendants, issue No.2 in favour of the plaintiffs and against the defendants, issue No.4 to 6 against the defendants. Resultantly, suit of the plaintiffs was decreed with costs and counter claim of the defendants was dismissed with costs. This was so done vide judgment and decree dated 17.7.2012.

Being dissatisfied, the defendants had filed an appeal before learned District Judge, Ludhiana, which was assigned to learned Additional District Judge, Ludhiana, who vide judgment and decree dated 21.7.2014 dismissed the said appeal, which left the defendants aggrieved and they had filed RSA-5760-2014 before this Court, notice of which was issued and the respondents appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

First coming to RSA-926-2015.

Permanent injunction dealt with by Section 38 of the Specific Relief Act,1963 (hereinafter referred to as the Act) is a discretionary equitable relief, which is to be granted by the Court keeping in view the facts and circumstances of the case including the conduct of the parties and no person can claim this relief as a matter of right. The provision dilates that a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing

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in his favour, whether expressly or by implication. Sub Section (2) provides that when any such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II.

Here there has not been any contract between the parties. Therefore, Sub-Section (3) shall come into application, which provides that when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases, namely:-

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Section 2 (a) of the Act defines 'obligation' as including every duty enforceable by law. Therefore, it comes out that the defendant is not threatening to breach any obligation existing in favour of the plaintiff and no illegal act is being done by the defendant – Corporation. Rather the defendant – Corporation is proceeding in accordance with law.

Section 41 of the Act deals with eventualities when an

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injunction is to be refused. Clause (h) provides that an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust. Whereas Clause (i) provides that when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court.

In this case the Corporation had issued notices to the plaintiffs under Sections 269 and 270 of the Punjab Municipal Corporation Act for raising illegal construction. Full-fledged procedure for passing order of demolition and stoppage of building and works in certain cases and for filing an appeal is provided under Section 269 of PMC Act. As per proviso, no order of demolition shall be made unless the person has been given by means of a notice served in such manner as the Commissioner may think fit, a reasonable opportunity of showing cause why such order should not be made. Sub-Section 2 provides that any person aggrieved by an order of the Commissioner made under sub-section (1) may prefer an appeal against the order to the Court of the District Judge of the City within the period specified in the order for the demolition of the erection or work to which it relates and sub-Section (3) provides that where an appeal is preferred under sub-section (2) against an order of demolition, the Court of the District Judge may stay the enforcement of that order on such terms, if any, and for such period, as it may

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think fit. Sub-Section (4) provides bar to the jurisdiction of the Civil Court dilating that save as provided in this section no court shall entertain any suit, application or other proceeding for injunction or other relief against the Commissioner to restrain him from taking any action or making any order in pursuance of the provisions of this section.

Therefore, jurisdiction of the Civil Court in such type of matters is clearly barred. However, the Courts below had totally ignored that aspect and they proceeded to decide the controversy when such Courts had no jurisdiction to adjudicate the said dispute assuming jurisdiction, which did not vest in such Courts.

Furthermore, the plaintiffs had equally efficacious remedy of filing an appeal before District Judge under Section 269 of the PMC Act but they did not avail of that remedy. Therefore, they were not entitled to get any sort of injunction and Courts below by wrong interpretation of law and misappraisal of evidence and legal position proceeded to grant relief to the plaintiffs to which they were not entitled. The trial Court although made specific observations that plaintiffs have no right to run any commercial business or to do any work of fabrication in this house, which causes nuisance to the neighbours and the defendant – corporation has got right to stop the illegal, working of the plaintiffs in the house in question; the neighbours have got a right to restrain the plaintiffs from carrying on

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the business or fabrication activities in the suit property and the plaintiffs can be prosecuted under criminal law also but thereafter it started harping on another tone observing that the plaintiffs have got a right to get injunction to the effect that the defendant can stop the commercial business and fabrication business of plaintiff in the suit property. Such injunction granted by the trial Court does not make any sense. With the Civil Court having no jurisdiction to entertain and try the matter, the plaintiffs having equally efficacious remedy to get the relief, the trial Court was not justified in passing such type of decree in favour of the plaintiff. It conveniently ignored the relevant provisions of law while granting relief to the plaintiffs assuming jurisdiction, which did not vest in it.

Learned Additional District Judge, Ludhiana also failed to take notice of the legal position on the subject and unnecessarily proceeded to grant relief to the plaintiffs without any justification. In that way, the judgments passed by the Courts below are perverse, which have resulted in miscarriage of justice. The judgments cannot be allowed to remain as such. The suit itself was not maintainable and deserved dismissal.

Learned counsel for the appellant has referred to judgment ***Hardevinder Singh Versus Paramjit Singh and others (2013) 9 Supreme Court Cases 261*** by the Apex Court wherein it was observed that person whose legal right prejudicially or adversely

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affected by a decree, is a person aggrieved by such decree and can maintain an appeal against that decree.

Learned counsel for the Corporation has referred to judgment ***Jugal Kishore and another Versus Municipal Corporation, Amritsar, 2009(4) RCR(Civil) 95*** by a Single Bench of this Court wherein it was observed that when the plaintiff had raised boundary wall in the street and the Commissioner had passed demolition order, the plaintiff had filed suit for permanent injunction, the suit was held to be not maintainable as order of demolition should be challenged by filing an appeal.

Thus, RSA-926-2015 is accepted. The judgments and decrees passed by the Courts below are set aside. Resultantly, the suit filed by plaintiffs Ashok Kumar Duggal (since deceased) through LRs and another stands dismissed.

Since the appeal stands allowed, no order regarding impleading of appellant Shiv Mohan Sharma is called for and the application stands disposed of accordingly.

As regards the connected RSA-5760-2014 filed on behalf of appellants Shiv Mohan Sharma is concerned, since the Corporation is proceeding against the plaintiffs by serving notice under Sections 269 and 270 of Punjab Municipal Act, a separate action at the instance of the appellants may not be necessitated by setting aside the judgments and decrees passed by the Courts below.

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With such observations, RSA-5760-2014 stands disposed of accordingly.

16.10.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

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