

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

**RSA No.1906 of 2018 (O&M)
Date of Decision:04.02.2019**

Shyam Sunder

.....Appellant

Versus

Municipal Council Now Municipal Corporation through its President/
Secretary/ Municipal Engineer and another

..... Respondents

And

RSA No.2152 of 2018 (O&M)

Shyam Sunder

.....Appellant

Versus

State of Haryana and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Sandeep Goyat, Advocate
for the applicant-appellant(s).

LISA GILL, J.

This judgement shall dispose of R.S.A No. 1906 of 2018 and R.S.A No. 2152 of 2018 as both these appeals arise from a common judgement and decree dated 21.03.2013, passed by the learned Civil Judge (Jr. Division), Hisar, as well as judgement and decree dated 30.08.2017, passed by the learned Additional District Judge, Hisar, whereby suit for permanent injunction filed by the appellant-plaintiff has been dismissed.

Brief facts necessary for the adjudication of the case are that

appellant-plaintiff no.1 along with one Suresh Kumar (plaintiff no.2 before the learned trial Court) filed a suit for permanent injunction (prohibitory) restraining the defendant-Municipal Council (for short 'defendant-M.C') from interfering in the actual and physical possession of the plaintiffs over the plot detailed in the plaint with a consequential relief of mandatory injunction directing the defendant-M.C., to reconstruct the boundary wall around the plot and the rooms constructed by the plaintiffs on the plot in question and in the alternate plaintiffs sought permission to raise construction on the plot as per sanctioned site plan and also prayed for a decree of recovery of compensation for illegal demolition of the boundary wall constructed by the plaintiffs. It was pleaded that the plaintiffs were in actual and physical possession of plot as detailed in the plaint. They purchased the plot vide registered sale deed dated no. 334 dated 10.04.2008. An application was submitted to the Municipal Council, Hisar on 24.02.2008 for sanctioning the site plan. Vide resolution dated 09.06.2008, building plan for construction on the plot was sanctioned by the defendant-M.C., Hisar. The sanctioned site plan was supplied to the plaintiffs vide letter dated 25.06.2008 from defendant-M.C., wherein it was mentioned that the site plan was valid up to 08.06.2009. Construction was started by the plaintiffs. A boundary wall and a room was constructed between 26.06.2008 to 30.06.2008.

However, vide memo dated 30.06.2008 issued by the Municipal Council, Hisar to the plaintiff, it was mentioned that building plan of the plaintiffs was rejected due to sale deed of the plot being fake. Staff members of the Municipal Council, Hisar came to the spot on 01.07.2008, at about

3.00.p.m., and forcibly demolished the boundary wall as well as the room over the plot without any prior notice. All requests of the plaintiffs fell on deaf ears and demolition was conducted. It was pleaded that the sale deed in question was not fake and the same has not been challenged by anyone till date. Furthermore, there is no provision in the Haryana Municipal Act, 1973 (for short 'Act') to withdraw or revoke sanctioned building plans once granted by the Municipal Council. No notice under Section 205 and 208 of the Act was served upon the plaintiffs before carrying out the demolition. Therefore, Municipal Council, Hisar is bound to reconstruct the same at its own expenses or in the alternate, plaintiffs are entitled to recover compensation and that they are entitled to raise construction over the plot according to the sanctioned building plan. It was further pleaded that the plaintiffs approached the president as well as senior officers of Municipal Council, Hisar, but they threatened that construction shall not be allowed and the plaintiffs would be forcibly dispossessed. Hence the suit was filed.

Defendant-M.C., resisted the suit. Various preliminary objections were raised in the written statement. Averments on merits were controverted. It was pleaded that the plaintiffs concealed true and material facts from the Court. Plaintiffs had no concern with the suit property which actually belonged to the Government. As per survey-sheet and field book for the year 1941-42, khasra number of the disputed property is 496/1 and the Municipal Council, Hisar, is the owner of the plot. During the battle with China in the year 1962, the said land was handed over to Civil Defence Department for constructing Static Tank for safety of public at large. Since then, suit property was under the control of Civil Defence Department.

Furthermore, sale deed dated 10.04.2008, it was stated, is a forged document. The alleged vendor-Ramesh Chander son of Trilok Chand had no right to sell the plot as he was not even the owner of the suit property. Forged documents were submitted to get the site plan sanctioned from the defendant-M.C. Connivance and collusion between Ramesh Chander and the plaintiffs was alleged. After the sanction of the site plan, it came to the notice of the defendant-M.C that the plaintiffs were not the owners of the plot and had submitted forged and fabricated documents. Sanction of the building plan was accordingly cancelled. Notice was duly issued to the plaintiffs, but they refused to accept the same. Demolition of the construction was then carried out. Prayer for dismissal of the suit was made.

Replication was not filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether plaintiffs are in actual and physical possession of plot as detailed in the head note of plaint?OPP
2. whether the suit of the plaintiffs is false, frivolous and vexatious?OPD
3. whether the plaintiffs have no cause of action and locus standi to file the suit?OPD
4. whether the plaintiffs have not come to the Court with clean hands?OPD
5. whether the plaintiffs be estopped by their own act and conduct?OPD
- 5-A whether the M.C. Hisar is owner of the suit property or not?OPD
6. Relief.

Issue no.5-A was framed as an additional issue by the learned trial Court on 23.01.2013.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances

as well as the evidence on record concluded that the plaintiffs were not in possession of the suit property, therefore there was no question of any permanent injunction restraining the defendants from interfering in their actual and physical possession. Issue no.5-A as to whether the M.C, Hisar, is owner of the suit property or not, was decided against the defendant-M.C while observing that cogent evidence to prove the ownership of the M.C, Hisar was not led. Accordingly, suit filed by the plaintiff was dismissed.

Appeal against the said verdict was preferred by the present appellant alongwith plaintiff no.2-Suresh Kumar. Cross appeal was preferred by M.C., Hisar challenging the verdict of the learned trial Court on issue no.5-A. Learned Additional District Judge, Hisar, dismissed the appeal filed by the plaintiffs while allowing the cross-objections/cross-appeal filed by the defendant-M.C, vide impugned judgment and decree dated 30.08.2017.

Aggrieved therefrom, abovesaid two Regular Second Appeals have been preferred by appellant-plaintiff no.1. Plaintiff no.2, has not approached this Court challenging the said verdicts.

Learned counsel for the appellant argues that once the M.C had sanctioned the site plan in respect to the building to be constructed over the plot in question, there is no provision of law under which the authorities could withdraw or revoke the sanction once granted. Defendant-M.C, had no right to demolish the construction raised by the plaintiff as no notice was issued to the plaintiff. Learned counsel for the appellant argues that the property in question was within the Lal Dora, therefore findings of the learned Courts below are perverse. There could not have been any evidence regarding the ownership of Ramesh Chander over the plot in question.

Possession of the property was duly proved over the suit property. Therefore, both the learned Courts below have wrongly dismissed the suit filed by the appellant-plaintiff. Cross-appeal filed by the M.C, Hisar, has been wrongly allowed by the learned Additional District Judge, Delay of three years in filing the said appeal has been wrongly condoned. It is thus prayed that this appeal be allowed and both the impugned judgments and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the plaintiff-appellant be decreed throughout and the cross-appeal filed by the M.C, Hisar, be dismissed.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

Learned counsel for the appellant is unable to deny that there is not an iota of evidence on record to show that the property in question, ever belonged to Ramesh Chander i.e. vendor of the plaintiff or that he was ever in possession of the said property. PW-5-Shyam Sunder, the appellant-plaintiff admitted that he had never seen proof of ownership of the property in favour of Ramesh Chander before purchasing the property. Neither is it mentioned in the sale deed that the plot in question is within the Lal Dora, nor was a site plan attached along with the suit property.

Per contra, DW-2-Balbir Singh, Clerk of Municipal Council, Hisar, proved the documents Ex.D-9 to D-33. DW-2 deposed that khasra no. 496/1 was owned by the M.C. Hisar. This land was transferred from M.C., Hisar to the Department of Civil Defence for the purpose of static tank and the government sanctioned a sum of ₹5,80,000/- in the year 1971 for this purpose. Copy of the sanction letter was proved as Ex.D-11. Details of the

static tanks to be constructed and the sanctioned amount besides the bills of the expenditure was duly proved in the form of Ex.D-12, D-24 and D-26.

It is relevant to note at this stage, that DW-2 deposed that the land in dispute at one time was claimed by Haryana Kurukshetra Gaushala as well. Plaintiff-Shyam Sunder was a party to that case. DW-1-Parveen Kumar, M.E., Office of Municipal Council, Hisar, has deposed that there used to be a static tank at the suit property, but now the same is vacant land. Plaintiffs cannot gain any benefit from the deposition of DW-1 to the effect that there was no proof regarding execution of a registered sale deed of the suit property in favour of the Civil Defence, Department. There is no question of any sale deed being executed in such a situation. Plaintiffs have failed to prove their case on the basis of the evidence on record. The building plans submitted by the plaintiffs were no doubt sanctioned by the M.C., Hisar, but the minute it came to its notice that the sale deed in respect to the plot in question was forged and fabricated, notice was immediately issued and sanction revoked.

There is no merit whatsoever in the argument raised by learned counsel for the appellant that once building plans are sanctioned, they cannot be revoked by the authorities in any situation whatsoever. It is a settled position that fraud vitiates everything. Once the matter came to the notice of the authorities, they were well within their right to take action in this respect. Plaintiffs have indeed failed to bring any evidence on record which entitles them to the relief of permanent injunction, as claimed.

At this juncture, it is relevant to note that on a query from the

Court regarding penal action by the State, learned counsel for the appellant fairly disclosed that an FIR in this respect was registered against the appellant, plaintiff no.2-Suresh Kumar and the concerned officials, though learned counsel is not able to inform about the fate of the said proceedings.

Learned Additional District Judge, Hisar has rightly set aside the finding of the learned trial Court on issue no.5-A and decided issue no.5-A in favour of the defendant-M.C., while relying upon judgement of Karnataka High Court in **R.Hanumaiah and another Vs. Secretary to Government of Karnataka Revenue Department and others, 2012 (1) LJR 211**. Present is clearly a case where no relief of any kind is made out in favour of the appellant. It is rightly held by both the learned Courts below that the plaintiff has failed to prove his case.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in both the regular second appeals. Judgement of the learned trial Court (to the extent upheld by the First Appellate Court) and that of the learned Additional District Judge, Hisar, are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgment and decree dated 21.03.2013 passed by the learned Civil Judge (Jr. Division) Hisar (to the extent upheld by the learned First Appellate Court) and judgement and decree dated 30.08.2017 passed by learned Additional District Judge, Hisar, are upheld.

Both the appeals are consequently, dismissed with no order as to cost.

04.02.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.