

In the High Court of Punjab and Haryana at Chandigarh

RSA-2547-2017

Date of Decision: February 14, 2019

Gurnam Singh

... Appellant

Versus

Nagar Panchyat, Makhu

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aditya Dassaur, Advocate,
for Ms. G.K. Mann, Advocate,
for the appellant.

Amit Rawal, J. (Oral)

The appellant-plaintiff has not been successful before both the Courts below in claiming permanent injunction restraining the respondent-defendant from forcibly and illegally demolishing any part of the shop. It was alleged that previously Bikramjit Singh son of Harbans Singh was the owner of the shop in dispute, which was purchased by the plaintiff vide sale deed dated 10.11.2004 for a sale consideration of Rs.1,40,000/-. An application for sanctioning of the site plan was submitted, which was duly sanctioned on 02.05.2006 and thereafter construction was also raised in terms of that sanction. Plaintiff left 65 feet area from the center of the road. However, appellant received a notice of the Executive Officer of Nagar Panchayat for demolition. In such situation, he was constrained to knock of the door of civil court.

Defendant opposed the suit by stating that the area forcibly and illegally occupied by the plaintiff which was falling in National High Way-

15 and required for extending/widening the road and from the center of the road 83 feet area from both the sides of the road was necessary for smooth running of the traffic. There was also an order of this Court for removing all the violations and encroachments done along side the road within four months. In this regard, notices were sent for removing the violations but the plaintiff failed to do so.

Plaintiff brought on record various documents through testimony of witnesses PW1 to PW6 including Manohar Lal Garg (PW6) who inspected the spot and proved on record assessment report, Surinder Pal, Naib Tehsildar (PW5) who demarcated the land and the witnesses of sale deed.

On the other hand, the defendants brought on record encroachment report as Ex.D12, violation report as Ex.D13, National highway encroachment list Ex.D14, application dated 27.03.2008 for police help (Ex.D15) and various other documents.

Learned counsel appearing on behalf of the appellant submitted that judgment and decree of both the Courts below are not sustainable in the eyes of law as in the demarcation, the appellant-plaintiff was found in possession of $11 \times 6 = 66$ square feet area which was stated to be unauthorized as demarcation was not in accordance with law.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit.

In fact, the defendant had demolished 11 feet x 27 feet constructed shop which was against the demarcation report. In such circumstances, the Courts below ought to have granted the mandatory injunction for restoring the possession. The testimony of the witnesses

remained un-scathed. No other building in the neighbourhood of the appellant was demolished except shop of the plaintiff. In such circumstances, defendant did not adopt the method of pick and choose. During the evidence, it has come on record that plaintiff raised the construction against sanctioned plan and this fact was not pleaded. In fact, as per Ex.P4, the total length of the shop in dispute was 51 feet x 11 feet. The construction was done with regard to 59 feet x 11 feet and there was encroachment. There are different notifications and policies whereby person in an area falling out of the municipal limit is required to leave the area from the Center of the road. It is also a matter of record that possession of land is still in favour of the plaintiff. In the absence of any claim for damages, the mandatory injunction for restoration would pale into insignificance.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

February 14, 2019
vkd

(Amit Rawal)
Judge

Whether speaking / reasoned : Yes

Whether reportable : No