

RSA-3605-2011 (O&M)

Date of decision: 21.12.2021

Parmod Kumar (deceased) through LRsAppellants

versus

Municipal Corporation FaridabadRespondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**Present:** Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh, Advocate
for the appellants.Mr. Deepender Ahlawat, Advocate
for the respondent.**FATEH DEEP SINGH, J.**

The present appellant, then plaintiff-Parmod Kumar Sharma initially filed against the then defendant, now respondent-Municipal Corporation, Faridabad (in short 'the Corporation'), a suit for permanent injunction and mandatory injunction seeking an order of restraint against the defendant-Corporation from causing any interference and obstruction in peaceful use and enjoyment by the plaintiff of

his premises and further from illegally and forcibly demolishing the same and for restoration of the demolished portion to its original condition. The suit is based on the premise that vide sale deed Ex.P-13 dated 05.02.1988, the plaintiff claims to have purchased 850 square yards of property from Muffiddin Begum, over which, he has built seven shops and the initial structure was in existence since 40-50 years. Earlier, the plaintiffs claimed that Department of PWD (B&R) had threatened forcible dispossession of the plaintiff from the property in question which led to filing of Civil Suit No.59 dated 1993 by the plaintiff where the Department had made statement that they shall not demolish the property and would have legal recourse. Subsequently, after sometime, threatened over the acts of the various authorities, plaintiff again filed another Civil Suit bearing No.550 of 1993, wherein, he was granted *ad interim* injunction but when the threatened act of the Department ceased, he did not pursue the suit which was dismissed in default on 23.10.1996. It is consequent upon issuance of notice under Section 12 sub Section 2 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1983 was served upon one of

the tenants of the plaintiff which led to the filing of the instant suit.

The Corporation in their stand failed to file any written statement and after repeated adjournments, the defence of the Corporation was struck off vide order dated 23.07.2003. The plaintiff to prove his case testified as PW-1 and examined PW-2-Satya Parkash Mittal, PW-3-Balbir Singh, PW-4-Mehtab Singh, ARC followed by the testimony of M.H. Jaidi-PW-5 and, thereafter, PW-6-Sh. Jugal Kishan and lastly examined PW-7-Ajaybir Clerk, House Tax, Nagar Nigam of the Corporation. The defendant on the other hand examined Jagat Singh Girdawar MCF as DW-1. The Court of learned Civil Judge (Junior Division) vide judgment/decreed dated 23.07.2010 dismissed the suit of the plaintiff with no costs.

Upon appeal, the Court of learned District Judge, Faridabad through impugned findings dated 16.05.2011 too dismissed the appeal and that is how the Regular Second Appeal has come about.

In view of the recent pronouncement in 'Kirodi (since deceased) through his LR vs. Ram Parkash and

others' Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

Heard.

It is a simplicitor suit for permanent injunction and mandatory injunction and, therefore, in view of the well enshrined law, the Courts are not supposed to express opinion as to the title of the property. Though, as has been contended by the counsel for the appellants, Mr. Ashish Aggarwal, Senior Advocate assisted by Mr. Kulwant Singh, Advocate that earlier the local authority was Faridabad Complex Administration which has now become Municipal Corporation did not file any written statement and, therefore, deemed to have not displaced the averments of the plaintiff. The plaintiff has proved on record notice regarding house tax and other related documents including house tax receipt and statements of the officials made in the previous suit which are Ex.P-14 to P-18 and which arguments could not be

controverted on behalf of the respondent-Corporation by Mr. Deepender Ahlawat, Advocate. Though, it is sought to be reiterated that DW-1-Jagat Singh Girdawar through his affidavit as Ex.DW-1/A has sought to refute and displace the evidence and the claim of the plaintiff but as has been pointed out by the appellant's side in his cross-examination, this witness accepts the fact that this property does not belongs to Municipal Corporation, Faridabad (MCF) and rather, the same has been sold to Tourism Department but has shown his total ignorance as to any document of such transfer. The fate of opposition that has sought to be made by Mr. Deepender Ahlawat, Advocate for the respondent that the appellant had raised construction without permission of the authorities could not be substantiated by any means. Since, as per their own witness, DW-1-Municipal Corporation, Faridabad has ceased to be owner of the property nor there is anything suggestive on the records that there is any such building violation or violation of any civic laws by the appellant/plaintiff. Thus, this Court needs to be slow in accepting the arguments of the learned counsel for the respondent. It needs to be taken note of the fact that

throughout his stand, the plaintiff claims that the premises is more than 40-50 years old and comprises of 14 shops besides a boundary wall, a house with big hall and three rooms regarding which, a site plan has been proved as Ex.P-4. The learned Trial Court and so it appears to this Court, the First Appellate Court, in judgments has sought to detail much on the question of title of the property rather than appreciating the fact that the defendant/present respondent could not bring forth anything suggestive of violation by the plaintiff or that the property in question was not the ownership or in occupation of the plaintiff. No doubt, the copy of house tax assessment register Ex.PW-7/A shows that Smt. Muffiddin Begum was the owner in property as per the house tax assessment and, thereafter, which has come in the name of the appellant/plaintiff which is reflected in document Ex.PW-7/B are unrebutted documents which suggests that *prima facie* the appellant/plaintiff is in occupation of the property. This Court refrains itself from commenting on this aspect of the matter as to the title or ownership of the property but the own admission by the Municipal Corporation-respondent that the plaintiff/appellant is in

occupation of the property is suggestive whatever may the status of the appellant/plaintiff which question is left open to be decided in appropriate proceedings but the defendant/respondent cannot act illegally and unlawfully without resort to law which it has right in case, if chooses to proceed ahead in accordance with law. The citations cited on behalf of the appellant titled as 'Ramji Rai versus Jagdish Mllah (dead) through LRs (SC)' 2007 (3) ALL MR 371; 'Prataprai N. Kothari versus John Braganza' 1999 (2) ALL MR 566; 'Ram Gowda versus M. Varadappa Naidu' 2004(3) BCR 788; 'Sheodhyan Singh and others versus Sanichraa Kuer and others' 1963 AIR (Supreme Court) 1879; 'M/s Roy and Co. and another versus Sm. Nani Bala Dey and others' 1979 AIR (Calcutta) 50 and 'Babaji Dehuri versus Biranchi Ananta, (Orissa)' 1996 (1) CivCC 605 are sufficient enough to hold that since the plaintiff/appellant is *prima facie* in possession of the property in question, the defendants have no right to proceed against him without having resort to legal recourse and cannot act illegally at their whims and fancies. The observations of the learned District Judge much reflected from observations made in para 2 of the impugned judgment which is as follows:-

20. *On the other hand, Shri K.L. Vashisth, Advocate, learned counsel for the respondent-defendant contended that the appellant-plaintiff has made the encroachment on the Municipal land which has been removed by the Municipal Corporation in a lawful manner on 20.01.2003. As per the case of the plaintiff he has purchased the suit property consisting seven shops. This plea is totally contradicted by the sale deed Ex.P-13. He further contended that the appellant-plaintiff has not got approved/sanctioned any site plan for raising the construction from the Municipal Corporation. He has also not obtained any change of land use certificate. So, the construction raised by the appellant-plaintiff was illegal. He further contended that the bills of the electricity are not connected with the property in dispute. Copies of house tax assessment register does not prove the title. Moreover, the description of the property given in those documents is totally different. The appellant has not led any evidence to prove the title of his vendor. So, he does not acquire any legal title to the suit property. Previous owner Smt. Muffidin Begum has not been produced in the witness box. In fact, the plaintiff-appellant has encroached upon the Municipal land and the present suit was filed only to perpetuate the illegality.*

28. Moreover, the sale deed Ex.P3 is quite vague and indefinite. In the sale deed Ex.P13 no khasra number or property number has been mentioned. The measurement of all the four sides of the property under sale have also not been mentioned. No site plan of the suit property was attached with the sale deed Ex.P13. Mere this fact is mentioned in the sale deed Ex.P13 that the area of the house in question is about 850 square yards which is very vague description of the property under sale and this type of description cannot establish that the site in dispute where the disputed seven shops were constructed is the part of the property mentioned in the sale deed Ex.P13.

29. The case of the plaintiff is also contradictory to the sale deed Ex.P13. In the plaint the plaintiff has mentioned that the construction of the most of the existing structure is about 40-50 years old. The sale deed in front of the plaintiff is dated 05.02.1988 and this suit has been filed on 02.05.2003 i.e. after about 15 years of the date of purchase. It means that disputed construction was in existence prior to its purchase. However, in the sale deed Ex.P13 it is mentioned that three rooms and a hall is constructed in the property which was sold by Smt. Muffidan Begum to the plaintiff-appellant. In his statement the plaintiff has made the improvement and stated that he had constructed

the seven shops in the year 1989. Thus, the case of the plaintiff is self contradictory.

31. The plaintiff has also admitted in the cross-examination that he has not got approved any building plan from the defendant Corporation for the construction of the shops nor he had taken any permission. This fact is not disputed that the property in dispute is situated within the Municipal area. The construction raised by the plaintiff without getting the building plan sanctioned is contrary to the provisions of the Municipal law. Hence, was the illegal.

34. There is no dispute with the proposition of law laid down in the cases Daula Ram versus The Municipal Committee, Hissar (supra), A.K. Kraipak and others versus Union of India and others (supra) and case Municipal Committee, Hissar versus Chaudhry Sat Pal (supra) relied upon by learned counsel for the appellant-plaintiff. But all these cases are quite distinguishable on facts because in this case the plaintiff-appellant has failed to establish his title qua the disputed strip of land. So, naturally, he had encroached upon the Municipal land and the respondent Municipal Corporation was well within its rights to remove the encroachment.

which are highly unfounded even if as has been held by the First Appellate Court that the plaintiff/appellant has encroached upon the Municipal land does not confers upon the Corporation right to use force illegally and if there is any such trespassing by the plaintiff/appellant, the Corporation is well within its right to initiate appropriate action under the Haryana Municipal Corporation Act, 1994 as amended and the Rules framed there under.

In light of what has been detailed and discussed above, both the Courts below has fell into an error and the findings so arrived at by them are wholly illegal and perverse and needs to be set aside by way of allowing the present appeal.

The present appeal stands disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

21.12.2021

Neha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No