

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA-4685 of 2019(O&M)  
Date of decision: 26.07.2022

Municipal Committee, Charkhi Dadri

..Appellant

Versus

Mandir Shri Mahadev Ji Chah Bada Shiv Mandir  
through Ram Niwas

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Singla, Advocate  
for the appellant.

Mr. Sumit Sangwan, Advocate  
for the respondent.

**ANIL KSHETARPAL, J(Oral)**

1. The Municipal Committee, Charkhi Dadri, has filed the appeal challenging the correctness of the concurrent findings of fact arrived at by the Courts below.
2. The plaintiff herein is a Deity. It has filed a suit for grant of decree of possession of land measuring 148.6 feet x 15 feet shown with marks "ABCD" comprised in Khewat No.2599/2450, Khasra No.384. The plaintiff claims to be co-owner along with certain others. It has been stated that the Municipal Committee has constructed a concrete road without acquiring the same, in accordance with law.
3. The defendant contested the suit.
4. The trial Court had culled out the following issues:-

*"1. Whether the plaintiff is entitled to decree of*

*possession of the suit property as described in the head note of the plaint by way of ejectment of the defendant from the suit property as described in the head note of the plaint by way of ejectment of the defendant from the suit property on the grounds as prayed for?OPP*

*2. Whether the plaintiff has no locus standi to file the present suit?OPD*

*3. Whether the present suit is not maintainable in the present form?*

*4. Whether the present suit is false and frivolous?OPD*

*5. Whether the plaintiff has not come to the Court with clear hands?OPD*

*6. Whether the present suit is bade for non-joinder and mis-joinder for the necessary parties?OPD*

*7. Relief.”*

5. Both the courts, as noticed, decreed the suit.

6. The learned counsel representing the Municipal Committee submits that a passage having width of 33 feet is in existence since time immemorial. He submits that some portion of the existing passage was previously metalled and now the entire width of the existing street has been made pucca by laying concrete on it.

7. On the other hand, the learned counsel representing the respondent contends that in fact the width of the street is 18 feet which has been increased to 33 feet at the point “ABCD”.

8. The plaintiff has produced the layout plan Ex.PW3/A. It is evident that the width of the street is uniform. It is well settled that the

property assigned and utilised for the purpose of passage vests in the Municipal Committee. Undoubtedly, the Municipal Committee is not entitled to increase the width in order to encroach upon the property of the other individuals, however, the owners cannot claim any right, title or interest in the property which is being used as a passage since time immemorial.

9. In such circumstances, the crucial issue would be about the width of the street starting in front of the Mandir until the main road.

10. Both the Courts have failed to examine the aforesaid issue, which is crucial in nature.

11. Keeping in view the aforesaid facts, the judgments and decrees passed by the courts below are set aside while remitting the matter back to the trial Court for deciding the same afresh.

12. The Presiding Judge is requested to visit the spot and himself demarcate the area with the help of the revenue officials. Thereafter, the Court will also examine “As to whether the passage is in existence from the time the temple was constructed or not?”

13. The parties through their counsels are directed to appear before the trial Court, on 09.08.2022.

14. All the pending miscellaneous applications, if any, are also disposed of.

**July 26<sup>th</sup>, 2022**

*nt*

**(ANIL KSHETARPAL)  
JUDGE**

*Whether speaking/reasoned* : *Yes/No*  
*Whether reportable* : *Yes/No*