

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

RSA-2571-2019

Date of Decision: October 17, 2023

**MUNICIPAL CORPORATION OF GURGAON THROUGH ITS
COMMISSIONER OF GURUGRAM**

..... Appellant

Versus

SAMAY SINGH AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Anil Chawla, Advocate for appellant.

HARKESH MANUJA, J. (ORAL)

By way of present appeal, challenge has been laid to the judgments and decrees dated 26.07.2016 and 12.10.2018 passed by the Courts below whereby, suit for declaration, claiming ownership over the suit property, besides grant of permanent injunction, filed at the instance of respondent No.1-plaintiff stands decreed.

2. Briefly stating, respondent No.1-plaintiff filed a suit for declaration claiming himself to be owner-in-possession of suit property situated within the revenue estate of village Carterpuri, Tehsil and District Gurgaon with the averments that he along with other villagers were initially allotted plots out of Khasra No. 26 under Indira Gandhi Bis Sutriya Yojna on 13.04.1976 and later separate sale deeds were executed in favour of allottees based on a previous resolution dated 14.08.1975, passed by the concerned Gram Panchayat. It was further pleaded that later, on account of acquisition of certain part of land falling in Khasra No.26, the allottees were transferred to Khasra No.76 by entering Tatima though, on account of inadvertent error, revenue record

could not be got corrected accordingly. The respondent-plaintiff also submitted that for the past almost 32 years, he has been living in the property in question thereby, paying electricity bills besides house tax along with other necessary charges. He thus claims that proceedings initiated against him as per notice under Section 408 of Municipal Corporation Act, 1994 (hereinafter referred to as 1994 Act) were per se illegal and uncalled, which compelled him to file the present suit.

3. On the other hand, appellant-defendant No.2 opposed the claim set up in the plaint while stating that no such allotment as alleged in the plaint was ever made to either respondent No.1-plaintiff or to other villagers and the certificate of allotment relied upon was a forged and fabricated document containing cuttings etc. It was further pleaded in the written statement that the show cause notice under Section 408(A1) of Haryana Municipal Corporation Act, 1994 Act was served upon to remove unauthorized construction raised at the instance of respondent No.1-plaintiff. To the contrary, respondents No.1 and 3 filed joint written statement, admitting the factum of allotment of plot in favour of respondent No.1-plaintiff in Khasra No.26 followed by its change to Khasra No.76 and besides admitting that due to inadvertence revenue record could not be changed.

4. The trial Court vide judgment and decree dated 26.07.2016 decreed the suit in favour of respondent No.1-plaintiff. Aggrieved thereof, the appellant-defendant No.2 filed First Appeal, however, the same was dismissed by learned Addl. District Judge, Gurugram vide judgment dated 12.10.2018.

5. Impugning the aforementioned judgments and decrees, learned counsel for the appellant submits that none of the Courts took into consideration the relevant piece of document produced at the instance of appellant-defendant No.2 in the shape of Ex.D-10 which relates to list of allottees of plots which does not contain the name of respondent No.1-plaintiff. Learned counsel also submits that in view of Section 408-A and 408-B of the Haryana Municipal Corporation Act 1994, no civil suit was maintainable as specific remedy of appeal was prescribed under Section 408(B) thereof.

6. I have heard learned counsel for the appellant and gone through the paper-book. I am unable to find substance in the submissions made on behalf of the appellant.

7. In the present case, the appellant has been able to prove the allotment made in his favour vide allotment letter Ex.P-2 based on the resolution passed by the then Gram Panchayat which has been brought on record as Ex. P-7. Moreover, respondent No.1-plaintiff has also produced on record electricity bills, house tax assessment records besides payment receipts to establish that he after raising construction thereupon was living there for the past more than 30-35 years. All these documents form part of the record as Ex.P-14 to Ex. P-18.

8. In addition, the case set up by the plaintiff-respondent No.1 also finds unparallel support from the admission made by defendants No.1 and 3 in their written statement wherein the initial allotment in Khasra No.26 and its later change to Khasra No.76 has been admitted.

It was also averred that although a tartima to this effect was entered,

However, the same could not be recorded in the revenue entries. In these circumstances, the appellant-defendant No.2 which succeeded the Gram Panchayat cannot dispute the allotment.

9. On the other hand, the reliance placed on Ex.D-10 by the learned counsel representing appellant is wholly misplaced. A perusal of said document shows that the same is an undated and unsigned one, bearing no stamp of any Government department/office to establish its authenticity and credibility and was thus, rightly not relied upon by the Courts below. Besides it, no merit can be found in the plea raised at the instance of appellant-defendant No.2 as regards jurisdiction of Civil Court as well. A perusal of show cause notice dated 03.11.2011 shows that neither any details of land/property have been mentioned therein, nor any property number or the area has been given thereby depriving the respondent-plaintiff of an opportunity to respond to it in an effective manner, and thus the jurisdiction of Civil Court would not be barred while assailing the same coupled with the fact that declaration sought for qua ownership of the suit property in the suit could only be prayed for before the Civil Court. Besides it, it may also be pointed here that issue No.3 framed by trial Court on the point of jurisdiction of Civil Court was never pressed at the instance of appellant-defendant No.2 during the arguments and thus, at this stage of second appeal, the same cannot be agitated afresh.

10. In view of the discussion made hereinabove, finding no illegality or perversity with the concurrent findings of fact recorded by

the Courts below, there being no overlooking of the material available on record, re-appreciation of pleadings and the evidence being impermissible, the present appeal being devoid of merits is thus dismissed.

11. Pending application(s), if any, shall also stand disposed of.

17.10.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>