

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

RSA-5423-2019 (O&M)

Date of decision: 16.11.2023

Reserved on: 17.10.2023

Padam Kumar Aggarwal

....Appellant

Versus

Municipal Corporation Faridabad and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. A.P.Bhandari, Advocate for the appellant

ANIL KSHETARPAL, J

1. In this Regular Second Appeal, the defendant assails the correctness of the judgment and decree passed by the First Appellate Court.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The Municipal Corporation, Faridabad, filed the suit for the grant of decree of declaration to the effect that the plaintiff is the absolute owner and is in physical possession of the property and the sale deed dated 14.03.2008, and judgment and decree dated 24.08.2006, are null and void, with a consequential relief of decree of permanent

injunction. In substance, the Municipal Corporation claims that it owns the plot and the defendants, in collusion with each other, have obtained a collusive decree on 24.08.2006, and thereafter, defendant no.2 has executed the sale deed in favour of defendant no.1. The Municipal Corporation claims that the suit property is a part of the public park.

3. Only defendant no.1 (appellant) contested the suit. He claims that he has purchased the property from defendant no.2 through a registered sale deed dated 14.03.2008, and the Financial Commissioner-cum-Principal Secretary, Haryana, has turned down the request of the Municipal Corporation for transfer of the plot. It is submitted that the Municipal Corporation is neither owner nor in possession of the property.

4. The trial court dismissed the suit, however, the First Appellate Court accepted the appeal filed by the Municipal Corporation and partly reversed the judgment and decree passed by the trial court. At the outset, it must be noticed that the Municipal Corporation has not been granted any decree for declaration that it is owner of the property. However, it has been held that the Municipal Corporation is managing the property, which vests in the State of Haryana and is in possession thereof.

5. Originally, Mohd. Umar @ Bhullan filed a suit for the grant of decree of permanent injunction claiming that he is owner of the property on the basis of a unregistered writing executed in

March, 2014. He was not granted any decree that he is owner of the property, however, on 29.02.1996 the court granted him a limited injunction against the forcible dispossession. The correctness of the aforesaid judgment was upheld in the first appeal as well as in the second appeal.

6. It may be noted here that defendant no.2, in the suit, is Mohd. Umar @ Bhullan and defendant no.3 is Akram, son of Mohd. Umar @ Bhullan. Akram filed a suit claiming the property against his father Umar. The aforesaid suit was transferred to the Lok Adalat wherein the parties entered into a settlement resulting in a decree in favour of Akram passed on 24.08.2006. Akram, on the basis of the aforesaid decree, sold the property to defendant no.1 (appellant herein) vide sale deed dated 14.03.2008.

7. This Court has heard the learned counsel representing the appellant and with his able assistance perused the paperbook alongwith the synopsis-cum-written arguments filed by him.

8. Learned counsel representing the appellant, apart from disclosing the facts, has contended that the respondent-Corporation has not even asserted when the legal possession of the property was taken over by it. It is submitted that the Regular Second Appeal arising from the judgment and decree dated 29.02.1996, ultimately culminated into the judgment of the High Court passed on 12.08.2004. Moreover, the suit itself is barred under Order II Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as

‘CPC’). The suit has not been properly instituted as it was filed through Tehsildar whereas as per Order XXXIX Rule 1 CPC the suit was required to be filed by the Secretary or any Director or any other Principal Officer of the Municipal Corporation. It has also been contended that the State of Haryana has not been impleaded as a party in the suit. It is contended that as per the revenue record, the suit land is recorded as ‘Nazool land’. Moreover, the property is not located 2 miles beyond the Municipal limits and therefore, the entry of Nazool land is also incorrect.

9. This Court has considered the submissions made by the learned counsel representing the appellant. Mohd. Umar @ Bhullan had claimed the property on the basis of an alleged sale deed Ex.D1 executed in the year 2014. It may be noted here that in a previous suit the court has declared that Mohd. Umar @ Bhullan is not proved to be owner of the property on the basis of the unregistered document. However, on careful perusal of para 25, it is evident that the plaintiff failed to connect the suit property with the property specified in Ex.D3. It has been found that no date has been mentioned in Ex.D3 and it does not contain any khasra no also.

10. Moreover, Mohd. Umar @ Bhullan failed to prove his title. The court in the previous suit categorically recorded that Mohd. Umar @ Bhullan has failed to prove that he is owner of the property in dispute. Mohd. Umar @ Bhullan has suffered a decree in favour of Akram, who, in turn, has transferred the property in

favour of the appellant. Since the ownership of Mohd. Umar @ Bhullan has not been proved, therefore, the appellant also does not get any right, title or interest in the property.

11. It has come on record that the appellant filed the execution petition of the decree for injunction passed on 29.02.1996, complaining that he has been dispossessed illegally. He prayed for the restoration of possession thereof. The Executing Court dismissed the execution petition, which, in appeal, was upheld by the Appellate Court. Thus, the appellant, as per his own admission, is not in possession of the property in dispute. Moreover, as per the revenue record, the property is recorded as 'Nazool land' which means that it is escheated property which vests in the State. It has also come on record that the property is being managed by the respondent- Municipal Corporation. The Corporation is entitled to injunction against various other persons except the true owner. In these circumstances, the Municipal Corporation was not required to explain when it came into the possession of the disputed property.

12. With respect to the contention of the learned counsel representing the appellant that the present suit is barred under Order II Rule 2 CPC, it may be noted that the Municipal Corporation, on the same cause of action, never filed any previous suit. Hence, the objection with regard to the maintainability of the suit under Order II Rule 2 CPC is wholly misplaced.

13. It may be noted here that the suit was filed by the Municipal Corporation through its official Tehsildar. As per Order XXXIX Rule 1 CPC, the suit can be filed by the Municipal Corporation through its Secretary, Director or any other Principal Officer. The Tehsildar is an official of the Municipal Corporation. Moreover, this point has never been pressed before the First Appellate Court and hence, it will not be appropriate to dismiss the suit only on this ground.

14. The next argument of the learned counsel representing the appellant is again without substance as the Financial Commissioner-cum-Principal Secretary has refused to transfer the ownership of the property in favour of the Municipal Corporation. However, the possession of the Municipal Corporation has never been disturbed, as it was always in possession of the property in dispute.

15. The last argument of the learned counsel representing the appellant also has no substance as the municipal limits keep expanding from time to time and the property, which comes within the municipal limits, includes the 'Nazool land'. Hence, the contention of the learned counsel representing the appellant that the property can be considered to be 'Nazool land' only if it is situated beyond 2 kms of the municipal limits, holds no firm ground.

16. Keeping in view the aforesaid discussion, the result is inevitable. Hence, dismissed.

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

16.11.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE