

2023:PHHC:083525

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

RSA-4482-2013 (O&M)

Date of decision: 03.07.2023

Pankaj Kumar and others

....Appellants

Versus

Small Town Committee and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Raj Kumar Gupta, Advocate for the appellants
Mr. Shashi Kumar Yadav, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

1. This Regular Second Appeal has been filed by the plaintiffs.

They filed a suit for grant of decree of declaration to the effect that they are the co-sharers in the half share of land measuring 15 kanals 14 marlas comprised in Khatoni no.715 khasra no.200 and 82 kanals 10 marlas comprised in khewat no.512, khatoni no.713 situated in town Mohindergarh and as such they are entitled to get their names recorded in the Municipal record. A primary objection was taken by the Small Town Committee at present the Municipal Committee, Mohindergarh with regard to the maintainability of the suit that a mandatory notice under Section 52 of the Haryana Municipal Act, 1973 was not issued. The trial court as well as the First Appellate Court on the one hand declared that the suit in the absence of mandatory notice is not maintainable, whereas on the other hand, also returned a finding that the plaintiffs have failed to prove that they are connected with Makhan Lal.

2. Learned counsel representing the appellants contends that once the suit itself has been held to be not maintainable on a technical ground, the courts should have refrained themselves from recording

findings on the merits of the case. He submits that the appellants may be permitted to file a fresh suit with the observation that the findings arrived at by the courts below, on merits of the case should not operate as res judicata.

3. Learned counsel representing respondent no.1 submits that once a finding has been recorded, the court should not interfere.

4. This Court has considered the submissions and perused the record. The appellants have a lot of substance to lay before the court on the merits of the case, however, the learned counsel representing the appellants admits that the suit is not maintainable in the absence of the mandatory notice under Section 52 of the Haryana Municipal Act, 1973, hence, it would not be appropriate to go into the merits of the case. Hence, the appeal is disposed of with the observation that the appellants shall be entitled to file a fresh suit, after serving the mandatory notice to the respondents. If such a suit is filed, the same shall be decided independently by the trial court without being influenced by the observations made in the impugned judgments by the courts below with respect to the merits of the case.

5. Disposed of.

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

03.07.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE