

RSA-555 of 2018

2023:PHHC:112976

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

RSA-555 of 2018

Date of decision: 28.08.2023

Gurdev Singh and another

.....Appellants

Versus

Cantonment Board, Ferozepur Cantt

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. N.K. Manchanda, Advocate,
for the appellants.

NAMIT KUMAR, J.

1. This regular second appeal is directed against the judgment and decree dated 21.10.2015 passed by Additional Civil Judge (Senior Division), Ferozepur, whereby suit filed by the plaintiff-appellants for permanent injunction has been dismissed as well as against the judgment and decree dated 17.11.2016 passed by Additional District Judge, Ferozepur, whereby appeal filed by the plaintiff-appellant against the judgment and decree dated 21.10.2015, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The facts relevant for disposal of this regular second appeal are that plaintiffs filed a suit for permanent injunction pleading therein that originally, suit property i.e. plot measuring 833.33 square yards, bearing khasra No.576 & 578 Min,

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situated near Bus Stand, Ferozepur Cantt., belonged to Punjab Wakf Board and it was leased out to the plaintiffs for a period of 33 months at the rate of Rs.1800/- per month and he has paid rent from 01.03.2010 to 30.11.2012 i.e. Rs.59,400/- vide receipt issued by Punjab Wakf Board and Rs.1,11,000/- vide receipt dated 25.05.2010. After taking the plot on lease, plaintiffs have constructed boundary wall. They wanted to construct residential house, as per proposed site plan, which was also issued by Punjab Wakf Board at the time of lease. That defendant has go no right, title or concern with the plot in question, but when plaintiffs want to raise construction, official of defendant-Board came at the spot and created hurdle in the construction, without any legal right. Plaintiffs requested the defendant not to do so, but to no effect. It was finally prayed that decree of permanent injunction restraining the defendant from creating any hurdle in construction of the house over the plot in dispute, be passed.

3. Upon notice, defendant appeared and contested the suit primarily on the ground that the suit is not maintainable as per Section 250 of the Cantonment Act, 2006; that no notice has been served upon the defendant by the plaintiffs before filing the suit and that plaintiff has not come to the Court with clean hands. While replying on merits, it was denied that suit property belongs to Wakf Board, rather it is owned by Government of India and is being managed and controlled by the defendant. That the lease issued by Punjab Wakf Board is illegal and invalid. Suit property bears survey No.276/280 as per General Land Register showing ownership of Central Government. That Wakf

Board has illegally and wrongly received rent. That Punjab Wakf Board has no right to issue NOC for raising construction in the Cantonment Area. As per Section 235 of Cantonment Act, 2006, whosoever intends to raise construction in the Cantonment area, is required obtain prior sanction from the Cantonment Board. Denying rest of the averments of the plaint, prayer was made for dismissal of the suit.

4. Replication was filed. From pleadings of the parties, following issues were framed on 30.05.2014 by learned trial Court:

1. Whether the plaintiffs are entitled for permanent injunction, as prayed for? OPP
2. Whether the present suit is not maintainable? OPD
3. Whether the plaintiffs have not come to the Court with clean hands and have suppressed a number of material facts from the Court? OPD
4. Relief.

5. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record dismissed the suit filed by the plaintiffs vide judgment and decree dated 21.10.2015.

6. Feeling aggrieved against the said judgment and decree of the trial Court, plaintiffs preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 17.11.2016.

7. Learned counsel for the appellants contended that the judgments and decrees passed by both the Courts below are based on surmises and conjectures. He further contended that the appellants have proved on record by leading documentary evidence that they were in possession of the plot in dispute, which was on lease from the Punjab

Wakf Board. He further contended that both the Courts below failed to appreciate that Punjab Wakf Board is the owner of the property and it had already issued NOC to raise construction over the plot in dispute. He further contended that respondent is not the owner of the property in dispute, therefore, there was no need to seek permission from it for raising construction over the plot in dispute. He contended that findings of both the Courts below being perverse and based upon total misreading of the evidence are liable to be set aside.

8. I have heard learned counsel for the appellants and perused the record.

9. Admittedly, the property in dispute falls within the Cantonment area of Ferozepur Cantt. As per Section 235 of the Cantonment Act, 2006 prior permission of the Cantonment Board is necessary for raising any construction over the property falling within the limits of cantonment area. Further as per Section 238 of the Cantonment Act the Board may either refuse to sanction erection or re-erection of the building. It is not the case of the appellants that they ever applied for sanction of construction over the plot in dispute to the defendant-Board. Therefore, appellants have rightly been restrained by the respondent-Board from raising the construction over the property in dispute. Even PW2 Santokh Singh admitted that prior permission of the Cantonment Board is necessary before raising construction in the Cantonment area. He admitted that the land under construction belongs to the Central Government falling in the Cantonment area and the Cantonment Board levies house tax and property tax on the property

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situated in the Cantonment area. Moreover, lower appellate Court has rightly observed that as per lease deed dated 05.04.2010 period of lease was 33 months, which has already expired and the appellants cannot even otherwise raise construction over the property in dispute. Thus they are not entitled to relief of injunction.

10. Concurrent findings have been recorded by both the Courts below. Learned counsel for the appellants has failed to show that the findings recorded by Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

11. In view of above, no question of law, muchless substantial question of law arises or has been raised for consideration in the present appeal. No other point has been urged.

12. Dismissed.

13. Pending application(s), if any, stand disposed of accordingly.

28.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No