

118 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA-726-2018 (O&M)
Date of decision 31.08.2023

BHIM SINGH

....Appellant

VERSES

MUNICIPAL COMMITTEE FARRUKH NAGAR AND ANR

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present:- Mr. Abhilaksh Grover, Advocate,
for the appellant.

SANJAY VASHISTH, J (Oral):

CM-1813-C-2018

This application has been filed under Section 151 of CPC for
condonation of delay of 21 days in refiling the present appeal.

In view of of the reasons mentioned in the application, the
same is allowed and delay of 21 days in refiling the present appeal is
hereby condoned.

Main case

1. The present regular second appeal has been filed by the
plaintiff against the concurrent findings of dismissal of suit, whereby the
decree for permanent injunction was prayed.

2. Plaintiff pleaded that he is owner in possession of the
residential house bearing House No.193, Ward No.1, measuring 240 sq.
yards in the Old Abadi of Farrukh Nagar, Tehsil Farrukh Nagar, District
Gurugram. It is further averred that on 21.02.2014, at about 4:00pm,
defendant No.1-Municipal Committee, Farrukh Nagar and defendant No.2
(Harchand) came to the house of plaintiff with JCB machine and told him

that the portion, shown in 'red colour' in the site plan, is an encroachment

RSA-726-2018 (O&M)

-2-

which has allegedly been made by the plaintiff illegally over which plaintiff has no right.

In the written statement filed by the Municipal Committee (defendant No.1), it is pleaded that the plaintiff has intentionally filed a wrong site plan and in fact, the area in question is meant for common chowk and the same is a public property and no one has right to encroach the same. Based upon the pleadings of both the sides, vide order dated 07.08.2015, learned trial Court framed following 7 issues:

- “1. Whether the plaintiff are entitled to a decree for permanent injunction as prayed for?OPP.*
- 2. Whether the suit of the plaintiff is not maintainable in the present form?OPD*
- 3. Whether the plaintiff has no locus-standi and cause of action to file the present suit?OPD*
- 4. Whether the suit of the plaintiff is bad for non serving the notice to answering defendant U/s 32 of MC Act?OPD*
- 5. Whether the plaintiff is estopped by his own act, conduct and latches to file the present suit?OPD*
- 6. Whether the plaintiff has mislead the true and material facts and no come with clean hands before this Hon'ble court?OPD*
- 7. Relief”*

3. While discussing the deposition of the plaintiff (PW-1), Court noticed that the plaintiff was not having any knowledge as to when the construction was raised. However, he admitted that the house in question was constructed by his father before independence and about the addition to the already constructed house, he could not explain the time period as to when the said addition was made.

It has also been admitted by the plaintiff that at some points of time, he himself worked as an employee in Nagar Palika and still, has not got any site plan sanctioned from the Nagar Palika either before or after the said addition/construction.

One Parkash Chand Saini, Draftsman (PW-3) produced by the

plaintiff, who prepared the site plan (Exhibit P-1) deposed that the site

RSA-726-2018 (O&M)

-3-

plan has been prepared by him merely on the instructions of the plaintiff but, he never visited the spot.

On the other hand, defendant No.1-Municipal Committee, Farrukh Nagar, produced official witness i.e. Ashok Kumar, Clerk (DW-1) and proved that the area shown in 'red colour' of the house of the plaintiff is the area that he has encroached.

4. Considering the pleadings & the evidence led by both the sides, learned trial Court observed in paragraph 15, 16 and 17 of its judgment which is reproduced here below:-:

"15. It is very essential to prove title of the suit land. As discussed above document with regard to the title are not proved by either side, plaintiff had to prove his case by leading cogent, convincing and sufficient evidence and with regard to the question of title plaintiff had relied upon the document (Ex.D8) which is municipal receipt wherein it is shown that total area of plaintiff's plot is 240 square yards. First of all to measurement of the property of plaintiff are given in the said document, secondly, municipal corporation/ municipal committee record containing entries is maintained for fiscal purpose like property tax/ house tax etc. and can not decide the question of title.

16 Further in the cross-examination of plaintiff himself as PW1, deposed that earlier he was employee under municipal committee and further deposed that while addition to the construction already raised by his father, he had got no site plan passed from the defendant. Further as per the deposition of PW3 site plan (Ex.PI) was prepared by not visiting the spot but merely on the instruction of the plaintiff. So, on the case file no document of title showing measurements of the property of plaintiff is proved. Nature of the construction upon the suit land/disputed land is in temporary nature and as discussed above possession of vacant land goes with ownership.

17. Thus, in light of the above discussion, plaintiff has failed to prove his case by leading cogent, convincing and sufficient

RSA-726-2018 (O&M)

-4-

evidence, hence, issue No. 1 is decided against the plaintiff and in favour of defendants.”

First Appellate Court also confirmed the findings recorded by the trial Court. Thus, giving its relevant observation in paragraph No.30, the First Appellate Court also dismissed the appeal filed by the plaintiff (appellant herein).

5. I have heard the counsel for the appellant (plaintiff) and thoroughly examined the impugned judgment and decree. After careful consideration, I have reached to the conclusion that the findings given by the Courts below are well justified and don't require any interference. Thus, the present appeal stands dismissed.

31.08.2023
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(SANJAY VASHISTH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No