

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2777-1987 (O&M)
Date of Order:20.02.2024

MUNICIPAL COMMITTEE AMLOH AND ANR.

.Appellants

Versus

CHHOTO (DECEASED) THROUGH LRS

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Gupta, Advocate and
Mr. Ravindra Singh, Advocate
for the appellant.

Mr. Rajesh Punj, Advocate
Mr. Sahaj Punj, Advocate
Mr. Rohit Dhiman, Advocate
for respondent no.1.

ANIL KSHETARPAL, J

1. In this regular second appeal, the defendant (Municipal committee) assails the correctness of the judgment and decree passed by the First Appellate Court which in turn has reversed the judgment and decree passed by the trial court.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. Smt. Chhate/Chhoto widow of Sh. Sadhu Ram filed a suit for grant of decree of declaration that she is owner of the suit property and the building plan submitted by her is deemed to have been passed. It was alleged that the suit property is part of Plot No.40 and she is owner in possession thereof after having inherited from her predecessors.

4. The Municipal Committee contested the suit claiming that the suit property is part of public thorough fare which vests in the Municipal

Committee.

5. The trial court dismissed the suit, however, the First Appellate Court on re-appreciation of the evidence reversed the judgment and decree passed by the trial court. The First Appellate Court has written an elaborate judgment after discussing each and every evidence led by the parties. Broadly, the First Appellate Court has recorded the following reasons while accepting the appeal:-

- (1) The Municipal Committee (appellants) has not produced any evidence to prove that the suit property was part of the municipal street/thorough fare. No record has been produced by the Municipal Committee although as per the Punjab Municipal Act, 1911 and the rules framed thereunder, required maintenance of record of the municipal streets.
- (2) The revenue official was appointed as Local Commissioner to inspect the site and submit report. He submitted his report Ex.P13, while concluding that the site in dispute is part of property no.40. He demarcated the property and compared it with Khasra Parmrish Abadi prepared by the competent authorities.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

7. The learned counsel representing the appellants submits that the First Appellate Court has erred in reversing the judgment and decree of the trial court as the windows and ventilators of the adjoining house is opening towards the suit property. He submits that the First Appellate Court should

have drawn inference on the basis of existence of windows and ventilators that the suit property is a municipal street.

8. This court has considered the submissions of the learned counsel representing the parties.

9. On a court question, the learned counsel representing the appellants admits that no documents have been produced by the Municipal Committee to prove that the suit property is part of municipal street. The mere opening of windows and ventilators by an owner of adjoining house towards the property in dispute would not be sufficient to conclude that the suit property is a street. The size of the disputed property is 33'x26'. No evidence has been led by the appellants to prove that any street having the width of 26 feet was in existence at the site. On perusal of the report, Ex.P13, it is evident that Plot Nos.36 and 40 were demarcated and it was found that there is no encroachment by the respondent upon any part of the street. The learned counsel representing the appellants has failed to draw the attention of the court to any material error in appreciation of evidence or non reading of evidence by the First Appellate Court.

10. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

11. Dismissed.

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

February 20, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO