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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(102)

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Date of Decision: - 24.09.2024

Faridabad Complex Administration

....Appellant

Versus

Rajinder Prashad

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Vishal Garg, Advocate
for the appellant. (Through VC).

Mr. Kulbhushan Sharma, Advocate
for the respondent.

VIKAS BAHL, J. (ORAL)

1. Present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918 by the appellant-defendant against the judgment and decree dated 16.10.1989 passed by the Additional District Judge, Faridabad, vide which the appeal filed by the respondent-plaintiff has been allowed and the suit of the plaintiff has been decreed and the judgment of the trial Court dated 27.03.1989 passed by the Sub-Judge, IInd Class, Faridabad has been set aside.

2. Brief facts of the case are that the respondent-plaintiff (hereinafter referred as "the plaintiff") had filed a suit for permanent injunction to the effect that defendant be restrained from demolishing the suit property. It was the case of the plaintiff that he was the owner in

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possession of house shown as 'A B C D E F G' in the site plan, which had been exhibited as Ex.P2 and was situated in Khewat No.28/23, Khatoni No.56/55, Khasra No.1370, situated within the revenue estate of Mauja Faridabad, Sub-Tehsil & District, Faridabad. The relevant jamabandi was annexed with the plaint in order to show the ownership of the plaintiff. It was averred that a residential house along with a boundary wall had been constructed by the plaintiff and he was enjoying the peaceful possession and ownership of the property when the defendant/present appellant (hereinafter referred to as "the defendant") issued a notice dated 02.12.1986 under Section 235 of the Haryana Municipal Act, 1973 demanding the plaintiff to demolish the house. It was stated in the plaint that since the construction was an old construction, thus, the same could not be demolished as per the provisions of law. A reply was filed to the said plaint in which it was stated that the construction had been raised by the plaintiff on the suit property in the month of November, 1986 and therefore, the notice was issued to the plaintiff under Sections 208, 209 and 235 of the Haryana Municipal Act, 1973 on 21.11.1986 and thereafter, on 02.12.1986. It was reiterated that the construction had been done in the month of November, 1986 and thus, notices were issued within the requisite time and therefore, they were in accordance with law and accordingly prayer for dismissal of the suit of the plaintiff was made. Replication was filed by the plaintiff denying the averments made in the written statement.

3. The trial Court on 02.06.1987 framed the following issues: -



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- “1. Whether the plaintiff constructed his house and boundary wall in dispute in the year 1980 if so to what effect? OPD.
2. Whether the defendant is demolishing the suit property without any legal right? OPP
3. Whether the suit is not maintainable ?OPD.
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
6. Whether the plaintiff has not cause of action to file the present suit? OPD.
7. Relief.”

4. The trial Court had dismissed the suit of the plaintiff after observing that the plea of the plaintiff to the effect that he had raised construction in the year 1980 was not proved by the respondent herein rather, a perusal of the khasra girdwari (Ex.P-4) showed that the construction of a 2 (biswas) house had been done up to March, 1986 and subsequently other construction had also been made and since the plea of the plaintiff as taken in the plaint was not proved, thus, the suit was dismissed.

5. The plaintiff filed an appeal against the said judgment and decree and the appeal was allowed by the Additional District Judge, Faridabad, vide judgment and decree dated 16.10.1989 and it was observed that simply because the plaintiff had not been able to prove that the construction was carried out in the year 1980 could not be a ground to dismiss the suit, when he had in fact been able to establish that the construction was raised at least six months prior to the issuance of the notice under Section 208 of the Haryana Municipal Act. It was further

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observed that the area in dispute regarding which the notice had been issued was 20'x25', which was covered within the area of 2 (biswas) and a perusal of the khasra girdwari (Ex.P4) would show that by 27.03.1986 a house was in existence, which was in an area of 2 (biswas) and thus, the notice which was issued on 21.11.1986 was beyond the period of six months from the said construction. It was further observed that although, in the khasra girdwari, it was also mentioned that in addition to 2 (biswas), other construction had been done till 21.10.1986, but it was observed that a perusal of the site plan (Ex.P2) would show that the construction which was reflected in the site plan was only to the extent of 20'x25' and in the rest of the area, a boundary wall had been constructed and the notice which had been issued was only with respect to the property which was constructed in the portion of 20'x25' which portion had already been constructed up to 27.03.1986. It was further observed that a boundary wall could very well be constructed within a period of 1½ months from 27.03.1986 and thus, even in case the argument to the effect that further construction had been raised up to October, 1986 is taken into consideration, then also it is apparent that the same was only qua a boundary wall, which could have easily been constructed prior to 20.05.1986, which was the relevant date as any construction done prior to six months of the notice dated 21.11.1986 was saved and could not be demolished. On the basis of the said finding, the 1st Appellate Court had observed that notice had not been issued within six months of the plaintiff raising the construction and thus, the appellant was restrained from

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demolishing the building and the finding on issues No.1 and 2 was reversed and the appeal was allowed. It is the said judgment which has been challenged before this Court by the defendant.

6. Learned counsel appearing for the appellant-defendant has submitted that a perusal of the khasra girdwari (Ex.P4) would show that on 27.03.1986, it has been shown therein that a house measuring 2 (biswas) had been constructed, but the entry dated 21.10.1986 would show that the area under constructed had increased to 10 biswas and thus, the construction had been made up to October, 1986 and the same was within six months of the issuance of the notice dated 21.11.1986 and thus, the defendant had a right to demolish the said construction. It is further submitted that the 1st Appellate Court had proceeded as if onus was on the defendant to prove the case, whereas, once there was a plea of the plaintiff that the construction was carried out in the year 1980, then, it was for the plaintiff to prove that the construction was carried out in 1980 and once the same was not proved, then, the suit of the plaintiff should have been dismissed.

7. Learned counsel appearing for the respondent, on the other hand, has supported the finding which has been recorded by the 1st Appellate Court and has referred to the documents including the notice issued by the present appellant which has been exhibited as Ex.P1 and has stated that the findings of the 1st Appellate Court are in accordance with law. It is further submitted that the respondent-plaintiff is a poor person and there is no dispute with respect to the fact that he is the owner of the

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property in question and he had raised the construction measuring 20'x25' with one boundary wall several decades back and has been living in the same and any demolition order would cause irreparable loss to the plaintiff. It is argued that in the present case there is no stay against the judgment of the 1st Appellate Court and the respondent-plaintiff has also been regularly paying the house tax.

8. This Court has heard learned counsel for the parties and has perused the paper-book and is of the opinion that the present appeal is meritless and deserves to be dismissed.

9. There is no dispute on the aspect that the respondent-plaintiff is the owner of the land in question. It is not the case of the defendant that the plaintiff had encroached upon any public land etc. The only issue which arises for consideration in the present case is as to whether the plaintiff/respondent had raised the construction measuring 20'x25', regarding which notice (Ex.P1) had been issued by the defendant, prior to six months of the issuance of the notice dated 21.11.1986. It has been admitted before this Court that in case the plaintiff is able to prove his construction prior to 20.05.1986, then his construction would be saved. A perusal of Ex.P1 would show that notice, which had been issued was with respect to the construction raised, which was to the extent of 20'x25'. Ex.P4, which is the khasra girdawri for the year 1985-87, is the most relevant document in the present case. A perusal of the same would show that on 27.03.1986 i.e. prior to 20.05.1986, an entry had been made in the said khasra girdawri that there was a house in question measuring 2

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(biswas). Thus, it is apparent that the said house was in existence as on 27.03.1986. The First Appellate Court had observed that the area measuring 20'x25' would fall within the said area and the said finding has not been shown to be perverse or illegal in any manner. Thus, the area regarding which the notice had been issued, was shown to be constructed much prior to 20.05.1986 i.e. till 27.03.1986 and thus, on the said short ground alone, the present appellant is not entitled to demolish the said construction in pursuance of notice (Ex.P1).

10. To meet the argument raised by learned counsel for the appellant to the effect that in the said khasra girdawri, there is an entry dated 21.10.1986 which makes a reference to the fact that the land covered under construction is 10 (biswas) and that the additional construction has been done between March, 1986 and October, 1986, it would be relevant to note that a perusal of the site plan (Ex.P2), to which there is no rebuttal, other than the construction of the hall measuring approximately 20'x25', there is no other construction except the boundary wall. Apart from the fact that the construction of the said boundary wall is not the subject matter of the notice (Ex.P1), this Court is also in agreement with the observations made by the 1st Appellate Court to the effect that the said boundary wall could have been constructed within a period of 1 ½ months from 27.03.1986 i.e. up to 20.05.1986. Moreover, the stand of the present appellant to the effect that in November, 1986, construction had been carried out, stands falsified from the reading of the document Ex.P4. At any rate, since the construction of the boundary wall

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is not an issue in the notice (Ex.P1), thus, even in case the said boundary wall had been raised subsequent to 27.03.1986 or even after 20.05.1986, then also, since no notice till date has been issued with respect to the same and thus, the question of demolishing the same also does not arise as a period of more than 38 years has elapsed by now. Even the argument raised by learned counsel for the appellant to the effect that once the plea of the plaintiff that he had raised the construction in 1980, was not fully established, the suit should have been dismissed, also deserves to be rejected, inasmuch as, the 1st Appellate Court had come to a finding of fact that the construction on the area measuring 20'x25' which was the subject matter of the notice (Ex.P1), had been raised on or before 27.03.1986, which was more than six months prior to the issuance of the notice and thus the suit of the plaintiff was required to be decreed as it is not in dispute that the construction which had been raised was required to be demolished, within a period of six months from the date when the construction was raised. The 1st Appellate Court had passed the judgment and decree on 16.10.1989. Although the present appeal was admitted on 28.03.1990 but there was no interim order granted and for all these years, it is argued on behalf of the plaintiff that he has been residing in the suit property in which construction had been carried out since several decades and thus, demolishing the said construction would cause irreparable loss to the plaintiff.

11. Moreover, the judgment passed by the 1st Appellate Court is in accordance with law and does not suffer from any other illegality or

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perversity nor is against any law and thus, deserves to be upheld and the present appeal being meritless and deserves to be dismissed and is accordingly dismissed.

September 24, 2024
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(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes