

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

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RSA-91-1990 (O&M).
Reserved on: 12.03.2024.
Date of Decision: 14.03.2024.

MUNICIPAL COMMITTEE, JIND.

... Appellant

Versus

DHARAM SINGH AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Sapan Dhir, Advocate,
for the petitioner.

Mr. Sanjay Kaushal, Sr. Advocate, with
Mr. A.P. Setia, Advocate, for the respondents.

Mr. Suveer Sheokand, Advocate, for respondents No.5 to 8.

VINOD S. BHARDWAJ, J.

The present Regular Second Appeal has been filed by the appellant-defendant Municipal Council, Jind against the judgment and decree dated 05.02.1987 passed by the Court of Senior Sub Judge, Jind and the subsequent dismissal of appeal preferred by appellant-defendant Municipal Council, Jind, by the District Judge, Jind vide judgment dated 16.05.1989.

2 Briefly summarized, the facts of the present case are that the respondents-plaintiffs filed a suit for permanent injunction against the appellant-defendant Municipal Council, Jind, seeking injunction from

interfering in their possession of the land measuring 5 biswas pukhta situated in Jind comprised in Khasra No.1525/1 min bounded as under:-

East: Sati Thanesharian,
West: Road
North: Road
South: land of the defendant.

3 It was averred in the plaint that Angoori Devi, Lila Devi, Behti Devi and Lilawati were owners of the disputed land. A civil suit was filed by them against the Municipal Council, Jind, which was decreed by the then Senior Sub Judge, Jind, vide judgment and decree dated 28.02.1973 whereby the vendors of the respondents-plaintiffs herein were held to be the owners in possession of the suit land. An appeal was filed by the Municipal Committee Jind, against the said judgment and decree dated 28.02.1973, which was also dismissed by the District Judge, Jind. During their being in possession of the land, Lilawati and others i.e. the vendors of the respondents-plaintiffs laid foundation over the suit land and raised construction. They remained in actual physical possession of the same as owners. The respondents-plaintiffs herein purchased the suit land from the vendors Angoori Devi and others through registered sale deed dated 22.10.1982 (EX.P-6) for a sale consideration of Rs.40,000/- and took actual physical possession of the property from said Angoori Devi and others and since then they are in continuous, exclusive and peaceful possession of the suit land and the same is being used for tethering of their cattles. It was averred that one Jagat Singh son of Ruli Ram encroached upon the suit land and he also filed a civil suit against the respondents-plaintiffs which was

resisted by the respondents-plaintiffs. Vide order dated 02.03.1983, the then Sub Judge First Class, Jind, directed the parties to maintain status quo. Aggrieved thereof, said Jagat Singh filed an appeal before the Ld. District Judge, Jind which was pending on the date when the suit herein was filed. Said Jagat Singh also filed a Civil suit against Municipal Council, Jind with respect to the above said land along with some other land which was decided in favour of the Municipal Council, Jind vide judgment and decree dated 13.10.84. It is averred that the plaintiffs stepped into the shoes of Smt. Anguri Devi etc. and that under the garb of judgment and decree dated 13.10.1984, the Administrator, Municipal Committee, Jind attempted to take forcible possession of the suit property. The foundation laid by the plaintiffs was dug, bricks were thrown and the dung-cake hill were put on fire. Hence, the suit for permanent injunction was filed.

The appellant-defendant Municipal Council, Jind entered appearance and filed the written statement wherein they did not dispute the judgment and decree dated 28.02.1973 passed in favour of Lilawati and others. Further, the factum of rejection of appeal by the District Judge, Jind was also not denied. The factum of frivolous suit instituted by Jagat Singh s/o Ruli Ram of Jind was however denied, but they acknowledged that Jagat Singh had also filed a civil suit against the Municipal Committee which was dismissed. It was also averred that the sale-deed in favour of the respondents-plaintiffs was false, without consideration and not binding upon the rights of the Municipal Council-appellant. It was also stated that the property cannot be ascertained as its dimensions, length, width and area in square feet is not given and that a false and frivolous suit has been filed to grab the land of the Municipal Council.

4 On consideration of the pleadings, the following issues were framed:-

“1. Whether plaintiffs are owners and in possession of the suit property as alleged in para No.1 and 2 of plaint ? OPP

2. Whether plaint is vague and indefinite, if so, to what effect ? OPD.

3. Whether Haryana State is a necessary party; if so to what effect ? OPD

4. Whether suit is false and frivolous and defendant is entitled for compensatory costs ? OPD.

5. Relief.

5 Evidence was led by the respective parties and while dealing with the issue as to whether the plaintiffs are owners and in possession of the suit property in issue No.1, the trial Court referred to the judgment and decree dated 28.02.1973 (EX.P-1) wherein vendors of the respondents-plaintiffs were held to be owners and in possession of the suit land. It was also noticed that Angoori Devi vendors of the respondents-plaintiffs had claimed their ownership on the basis of sale deed dated 22.12.1966 executed in their favour. In the said civil suit, the stand of the appellant-defendant Municipal Committee was that the suit land was a public street and a specific issue to the said effect was also framed. The Committee failed to prove its stand and discharge its onus. The suit for permanent injunction was decided against the appellant-defendant Municipal Committee and in favour of Angoori Devi and others. The appeal against the said judgment and decree was also dismissed on 17.01.1974. Hence, it was noticed that the respondents-plaintiffs were able to prove a valid title in

favour of their vendors and that the sale deed EX.P-6 contained full description of the land.

6 To controvert the claim of the respondents-plaintiffs the Committee examined DW.1 Mam Chand Parokar of the Committee and DW.2 Ramesh Chand J.E. of the Municipal Committee, Jind. However, they only relied upon the oral evidence of the said witnesses. It was noted by the trial Court that even the said witness had not seen the documents of ownership of the plaintiffs qua the suit land, hence, their testimonies were observed to be without much force.

7 Upon consideration of the rival submissions, the Senior Sub Judge, Jind, also made a reference to the High Court Rules and Orders Volume I, Chapter 1-9, Para No.9 which prescribes that where the suit is for any specific plot with definite boundaries, it shall also be accompanied by a map drawn to scale showing clearly the specific plot claimed or in relation to which the decree is to be made and so much of the fields, adjoining be also drawn to scale as may be sufficient to facilitate identification. It was noticed that the identity of the suit property including Khasra numbers was duly mentioned and the same already stands established in the judgment and decree dated 28.02.1973 in EX.P-1 and subsequent dismissal of the appeal on 17.01.1974 (EX.P-3). The certified copy of the site plan was EX.P-5 of Suit file No.188 of 1970 decided on 28.02.1973 in which suit, the original had been well proven. It was thus held that the ownership and possession as well as demarcation of the property is specifically proved and that the plea that the area cannot be identified or is not capable of demarcation is not sustainable. The contention of the appellant-defendant Municipal Committee, Jind was

rejected and suit was decreed against the appellant-defendant with costs. Appellant-defendant Municipal Committee, Jind was restrained from interfering into ownership and possession of the plaintiffs over the suit land.

8 Aggrieved thereof, an appeal had been preferred by the appellant-defendant Municipal Committee, Jind before the District Judge, Jind. Vide his judgment and decree dated 16.05.1989, the said appeal was also dismissed by the District Judge, after recording that the respondents-plaintiffs succeeded in establishing that they had derived their valid title and were also in actual physical possession of the suit property. Reference was also made to the earlier judgment passed in favour of the vendors of the respondents-plaintiffs and the site plan which was duly proved on the file of the said suit as EX.P-5. Consequent to dismissal of the said appeal by the District Judge, Jind, the present regular second appeal has been filed.

9 Learned counsel for the appellant has contended that the Courts have failed to take into consideration that one Jagat Singh had filed a suit for injunction to restrain the Municipal Committee from interfering in possession of the plaintiff Jagat Singh therein and that the property in dispute in the present case was also included the property in dispute as has been specifically admitted in the plaint by the respondents-plaintiff himself. He contends that the Municipal Committee had taken the matter upto the Hon'ble Supreme Court in Civil Appeal No.290 of 1991 decided on 28.03.1995 and reported as [1995 AIR (SC) 377]. In the said suit instituted by Jagat Singh, the Municipal Committee Jind had been declared as owner of the suit land and the area was concluded to be a gair mumkin johar. He further contends that the description of the property is

not clear and once the description of the property is unascertainable, the suit ought to have failed for the said reason.

10 Responding to the above, learned Senior counsel for the respondents-plaintiffs contends that in so far as the suit of **Advocate Jagat Singh** is concerned, the said suit had been filed by him for seeking injunction against the Municipal Committee from interfering in possession over land measuring 05 kanals compromised in Khewat No.134, Khatauni No.155, Rectangle No.173, Killa No.27/1. He further contends that even though the appellant claims the aforesaid land to be part of Khasra No.153/5 min, however, no evidence has been led by the Municipal Committee to link the land described herein to be same land. Nonetheless, it was contended that civil suit instituted by Jagat Singh was dismissed by the Senior Sub Judge since Jagat Singh failed to prove that he was owner in possession of the suit land. The Court of District Judge set aside the finding recorded by the trial Court and decreed the suit in favour of Jagat Singh, respondent therein, after accepting title of Prem Singh who was alleged to be predecessor-in-interest of said Jagat Singh.

11 The Regular Second Appeal filed by the Municipal Committee was also dismissed by the High Court against which the Municipal Committee had approached the Hon'ble Supreme Court. It was noticed by the Hon'ble Supreme Court that the respondent-plaintiff Jagat Singh, who claimed to be the owner of the land in question and to be in continuous possession of the said land, failed to establish his title to the suit land and that the Court of appeal merely recorded that the title of the respondent-plaintiff Jagat Singh therein was admitted by the Municipal Committee. The title and possession of Jagat Singh was always disputed right from the stage

of filing of written statement and that the suit of respondent-plaintiff could not be decreed merely on the basis of entries in the revenue record. It was also observed that the respondent-plaintiff contended that the Municipal Committee had made unauthorized encroachment over the land and that a statutory notice was served upon him which was challenged. It was thus specifically a case filed under Section 6 of the Specific Relief Act and the decree was passed even though ownership by the respondent-plaintiff therein could not be established.

12 He argues that the Hon'ble Supreme Court nowhere declares the Municipal Committee, Jind, to be the owner of the land and the said judgment, can at best be read as holding that Jagat Singh, respondent-plaintiff therein was not established to be the owner of the suit land. He further submits that as against the same, the case of the respondents-plaintiffs is on a much better footing since vendors of the respondents-plaintiffs had succeeded in the proceedings instituted by them earlier against the Municipal Committee in Civil Suit No.188 of 1970. A specific issue as to whether the plaintiff Angoori Devi, Lilawati and defendants No.3 and 4 therein i.e. the vendors of the petitioner had become the owners in possession of the property in dispute from one Shamsher Singh was also framed. While dealing with the said issue, a specific finding was recorded by the Senior Sub Judge in the judgment EX.P-1 that the plaintiffs and defendants No.3 and 4 therein were owners in possession of the property in dispute on the basis of Ex.P-2. The said judgment was assailed by the Municipal Committee, by filing an appeal before the District Judge, Rohtak camp at Jind and the same was dismissed by the District Judge, vide judgment dated 17.01.1974. Hence, title of the vendors of the respondents-

plaintiffs was fully established. He further submits that site plan EX.P-5 was duly brought on record which gave a detailed description of the property and its dimensions and that the same was duly established also in the previous round of litigation amongst the parties. Hence, it is not a case that the property was not correctly described. The sale deed also specifically mentions about the dimensions and the boundaries of the property in dispute and that the same is to be read in consonance with the documents that already stands established and proved before the Court in the proceedings instituted by vendors of the respondents-plaintiffs and decreed on 28.02.1973 as upheld vide judgment dated 17.01.1974.

13 No other argument has been raised.

14 I have heard learned counsel appearing for the respective parties at great length.

15 For accepting the plea of the appellant-defendant Municipal Committee, Jind that it was owner of the land question and the said land was *gair mumkin johr*, it was incumbent upon the appellant-defendant Municipal Committee, Jind to lead evidence and establish that Khasra no.1525/1 min was a *gair mumkin johr* and then an entry to the said effect stood in the revenue record in favour of the appellant-defendant Municipal Committee, Jind. No such record had been proved by the appellant-defendant Municipal Committee and only oral evidence has been led by the appellant-defendant Municipal Committee, Jind and even their own Junior Engineer gave a statement that he had not seen the title document of the land in question.

16 Still further, much emphasis had been laid on the proceedings instituted by Jagat Singh against appellant-defendant Municipal Committee,

Jind to contend that ownership of the Municipal Committee stood accepted by the Hon'ble Supreme Court in the judgment of Jagat Singh (supra). However, a perusal of the said judgment of the Hon'ble Supreme Court clearly reflects that the Hon'ble Supreme Court had not passed any declaration in favour of Nagar Palika, Jind, declaring it to be the owner of the land notwithstanding that there was no evidence to link that the land in dispute in the said civil suit is in fact the same land as is subject matter of the current proceedings. Be that as it may, the said proceedings had culminated against the respondent-plaintiff therein Jagat Singh as he failed to establish his possession and consequently could not be vested with the possession under Section 6 of the Specific Relief Act.

17 It is also noticed that the judgment and decree dated 28.02.1973 and the judgment of the District Judge, Rohtak, camp at Jind dated 17.01.1974 clearly established that title of the vendors of the respondent-plaintiff stood established and affirmed. Once a finding on the issues had already been recorded by the Civil Courts in favour of the vendors who had subsequently sold the land in favour of the respondents-plaintiffs and the specific demarcation and the site plan has been duly established, it cannot be said that the identification and demarcation of the suit property is indiscernible.

18 Hence, considering it from any angle, the appellant-defendant Municipal Committee, Jind has failed to establish its case on both counts i.e. Khasra No.1525/1 min is a *gair mumkin johr* and also that ownership of the said land stood vested with the Municipal Committee. While the plaintiffs established that ownership of his vendors was decreed by the Courts, against the Municipal Committee and that the Municipal Committee

would have no right to raise a fresh title. The said issue having already attained finality, Municipal Committee, cannot claim a better right against the vendees. Concurrent findings of fact have been recorded by the Courts and there is no material on record on the basis whereof such finding can be said to be illegal, perverse, invalid or not sustainable on a meaningful reading of the evidence. The affirmative evidence led by the respondents-plaintiffs being attempted to be discredited on a general inference to flow from judgment of **Jagat Singh** (supra) when the said judgment does not make a declaration in favour of Municipal Committee, Jind and description of land has not been matched.

- 19 The present regular second appeal is accordingly dismissed.
- 20 Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

March 14, 2024.

raj arora

(VINOD S. BHARDWAJ

JUDGE

Whether speaking/reasoned

Whether reportable

: Yes/No

: Yes/No