

109

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

RSA-2097-1992

Date of decision: 22.03.2024

Harbhajan Singh and another

...Appellants

Versus

Municipal Corporation, Amritsar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: None for the appellants.

Mr. Dilsher S. Mann, Advocate for respondent Nos.2 and 3.

VIKAS BAHL, J. (ORAL)

1. This is the plaintiffs' appeal against the concurrent findings of fact. The plaintiffs/appellants had filed a suit for permanent injunction restraining defendant Nos.2 and 3 from encroaching upon any part of Gali No.4 towards the west of the house of the plaintiffs. Further prayer was made in the suit for decree of mandatory injunction against defendant No.1 directing them to remove encroachment on the said street and restraining defendant Nos.4 and 5 from transferring any part of the said gali either to defendant Nos.2 and 3 or to any other person. Defendant No.1 in the said case was Municipal Corporation, Amritsar and the suit of the plaintiffs was dismissed vide judgment dated 02.06.1987 and

thereafter appeal filed by the present appellants was dismissed by the Appellate Court vide judgment dated 09.06.1992.

2. On 24.11.1992, a Coordinate Bench of this Court was pleased to pass the following order:-

“Admitted.

To be heard with RSA No.1809 of 1985.

November 24, 1992

Sd/- Judge”

3. A perusal of the above order would show that no interim order was passed in the abovesaid appeal and the main appeal was ordered to be listed along with RSA No.1809 of 1985. The said RSA No.1809 of 1985 was rendered infructuous vide order dated 03.06.2011. Relevant portion of said order is reproduced hereinbelow:-

“Harbhajan Singh and Ors

Appellants

v.

The Commissioner, Municipal Corporation, Amritsar and Ors

Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.T.S.Chauhan, Advocate for

Mr.A.S.Bakshi, Advocate for the appellants

Mr. Amarjit Singh, Advocate for

Mr.T.S.Gujral, Advocate for respondent No.1

Ms. Niti Wadhawan, Advocate

for respondent no.2

JITENDRA CHAUHAN.J (Oral)

During the course of arguments, learned counsel for respondent No.2 has placed on record a photocopy of the compromise dated 13.4.2003, arrived at between the parties.

The same is taken on record as Mark "A".

From the perusal of the compromise, it emerges that both the parties have decided not to prolong the litigation and to withdraw their cases.

Mr.T.S.Chauhan, learned counsel appearing for the appellants states that he has no instructions in this regard.

There is no reason to doubt the compromise, when it is filed through a counsel.

However, it is made clear that in case, the averments made in the compromise Mark "A" are found to be false or the appellant is not satisfied with the compromise, the appellants shall be at liberty to revive the appeal.

Accordingly, the appeal is rendered infructuous. Ordered accordingly.

Sd/-(JITENDRA CHAUHAN)

JUDGE

3.6.2011”

4. A perusal of the above order would show that the said appeal was also filed by Harbhajan Singh and others against the Municipal Corporation, Amritsar and it was stated that the matter has been compromised and the said compromise deed was placed on record and marked as Mark “A” and it was also stated that the parties had decided not to prolong the litigation and to withdraw their cases.

5. In the present case, vide order dated 03.10.2023, a Coordinate Bench of this Court had issued notice to the appellants and as per the report of the Registry, the attorney by whom the present appeal was filed i.e., Karnail Singh is reported to have died.

6. Although, the case has been called twice but no one has put

in appearance on behalf of the appellants. None had appeared on behalf of the appellants on 03.10.2023 also.

7. Accordingly, the present Regular Second Appeal is dismissed for non-prosecution.

8. Liberty is however granted to the appellants to revive the present appeal in case any cause survives to them.

9. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

22.03.2024

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No