

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106

RSA-3033-1994 (O&M)
Date of decision: 24.04.2024

SHAM SUNDER

..Appellant

Versus

MUNICIPAL COMMITTEE, HISSAR

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate
for the appellant.

Mr. Jagdish Manchanda, Advocate
and Mr. Nischal Chetanya Manchanda, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. The plaintiff has filed this regular second appeal assailing the correctness of the judgment passed by the First Appellate Court, which in turn has reversed the judgment and decree passed by the trial Court.
2. The plaintiff has also filed an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908, in order to produce the judgment passed by the Civil Court on 05.11.1999 as additional evidence, which in appeal has been upheld by the First Appellate Court on 16.02.2001.
3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
4. The plaintiff filed the suit claiming the decree of permanent injunction restraining the Municipal Committee, Hisar from converting the land into a path or raising any construction on plots No.15, 16, 17, 27 and 28, situated at the Mahavir Colony, Hisar. In substance, the plaintiff's case is

that his father Sh. Jagan Nath purchased the property by virtue of sale deed dated 29.07.1968 from Sh. Ram Prakash etc. The defendant while contesting the suit claimed that the property is a public property and the plaintiff has no right, title or interest in the same. It was also stated that Sh. Jagan Nath never owned the disputed plots. The trial Court decreed the suit, however, the First Appellate Court upon reappreciation of evidence recorded a finding of fact that the plaintiff has failed to prove the title of Sh. Ram Prakash etc. i.e. the vendor of Sh. Jagan Nath. Thus, the judgment of the trial Court was reversed.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the scanned copy of the requisitioned record.

6. The learned counsel representing the appellant has made the following submissions:-

i. The plaintiff's title was never in dispute and hence, he was not required to prove the title of Sh. Jagan Nath's vendor.

ii. In two judgments passed in civil suit titled as Sham Sunder Vs. Hari Singh, it has been held that the plaintiff is the owner of the property in dispute.

7. This Court has considered the submissions of the learned counsel representing the parties.

8. It may be noted here that while replying to para 1 of the plaint, the Municipal Committee has stated that the plaintiff or his predecessor Sh. Jagan Nath are neither owners nor in possession of the disputed property.

9. Issue No.1 framed by the trial Court reads as under:-

“1. Whether plaintiff is owner in possession of suit land (plot No.15/16/17/27/28 in Mahabir Colony, Hisar? OPP”

10. Thus, it was incumbent upon the plaintiff to prove the title of his vendor. The sale deed only shows that there was some transfer of rights by Sh. Ram Prakash etc. in favour of Sh. Jagan Nath, however, in order to prove transfer of title, it was for the plaintiff to prove that Sh. Ram Prakash had any right, title or interest in the property. In civil law, it is necessary for the plaintiff to prove the title of his vendor, if he claims the property by virtue of sale deed executed in his name by another person.

11. With reference to the additional evidence, it may be noted that the Municipal Committee was never a party. Hence, the aforesaid judgment shall not bind the Municipal Committee. In any case, the suit was filed by the plaintiff against regular encroacher, which was decreed. However, that alone is not sufficient to hold that the plaintiff’s vendor had a title.

12. Hence, no ground to interfere is made out.

13. Dismissed accordingly.

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

April 24th, 2024

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No