

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. RSA-801-1994 (O&M)
Reserved on: 20.01.2024
Date of decision: 25.01.2024

SANATAN DHARAM SABHA
Versus
..Appellant

HUKAM CHAND (DECEASED) THROUGH LRS AND ANR.
..Respondents

2. RSA-802-1994 (O&M)

SANATAN DHARAM SABHA
Versus
..Appellant

PREM WATI (DECEASED) THROUGH LRS.
..Respondent

3. RSA-803-1994 (O&M)

SANATAN DHARAM SABHA
Versus
..Appellant

PREM WATI (DECEASED) THROUGH LRS.
..Respondent

4. RSA-804-1994 (O&M)

SANATAN DHARAM SABHA
Versus
..Appellant

PREM WATI (DECEASED) THROUGH LRS.
..Respondent

5. RSA-805-1994 (O&M)

SANATAN DHARAM SABHA
Versus
..Appellant

PREM WATI (DECEASED) THROUGH LRS.
..Respondent

6. RSA-806-1994 (O&M)

SANATAN DHARAM SABHA

..Appellant

Versus

PREM WATI (DECEASED) THROUGH LRS.

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L. Sarin, Sr. Advocate
with Ms. Himani Sarin, Advocate
for the appellant.

Mr. S.D. Bansal, Advocate
for respondents.

ANIL KSHETARPAL, J.

1. With the consent of the learned counsel representing the parties, a batch of six connected regular second appeals is being disposed of by a common judgment.

2. The defendant in all these appeals, challenges 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.

3. In order to comprehend the issues involved in these cases, the relevant facts, in brief are required to be noticed.

4. The appellant Sh. Sanatan Dharam Sabha purchased adjoining pieces of land located in area of *patti musalman* and *patti jatan*, Sonapat. As many as six sale deeds were executed by vendors in favour of the appellant. In all these six sale deeds, which were executed and registered between 17.10.1989 to 06.12.1989, some part of the land comprised in the following khasra numbers, was sold:-

“7564//3451-3452, 3446, 3433, 6539//3434-3435 and 6546//3436-3447”

5. The respondents namely Sh. Hukam Chand and Sh. Jaipal in

RSA-801-1994, whereas, Smt. Premwati in remaining five appeals filed as many as six suits for possession by claiming superior right of presumption on the ground that they are co-sharers. All the suits were dismissed by the trial Court, however, reversed by the First Appellate Court. In other words, the First Appellate Court has held that the respondents (plaintiffs in the suit) are entitled to exercise their superior right of pre-emption qua these six sale deeds.

6. The common issue that arises for adjudication in the cases at hand is ‘whether the immovable property, which has been sold through these six sale deeds is located within the municipal limits of Sonapat City or not?’ The trial Court in all these cases has held that the immovable property is located within the municipal limits of Sonapat, however, the First Appellate Court has reversed the aforesaid finding.

7. The learned counsel representing the appellant contends as under:-

- i. The appellant in all these appeals has proved a certificate issued by the Executive Officer, Municipal Committee, Sonapat, certifying that the disputed immovable property is located in the municipal limits of Sonapat and this certificate has been proved by DW-2 Sh. Bal Kishan, Patwari, who was at the relevant time working in the Municipal Committee, Sonapat.
- ii. From the perusal of notification dated 31.12.1984, published in Haryana Government Gazette dated 15.01.1985, that the municipal limits of Sonapat City were extended and the disputed property came within the municipal limits. While referring to Ex.D-2 and Ex.D-3,

the notification and layout plan (*aks-shijra*), he submits that it is proved that the dispute land was within the municipal limits on the date, when the sale deeds were executed.

iii. In all the sale deeds, there is a recital that the immovable property falls within the municipal limits and the law provides that if the sale of land or immovable property falling within the municipal limits is sold, 2% extra stamp duty is payable, which was duly paid. Further, while referring to the notification dated 08.12.1985, he submits that the Haryana Government in exercise of its powers conferred under Sub-Section 2 of Section 8 of the Punjab Pre-emption Act, 1913, declared that no right of pre-emption shall exist in respect of sale of land falling within the areas of any municipality in Haryana. In the end, he submits that the First Appellate Court has erred in reversing the judgments passed by the trial Court in all the six suits.

8. On the other hand, while referring to the deposition of the Patwari Sh. Bal Kishan, the learned counsel representing the respondent submits that he was only a casual worker and the plaintiff failed to prove the certificate issued by the Executing Officer of the Municipal Committee by producing the primary evidence. He further submits that the gazette notification 'Ex.D-2' does not include the khasra number of immovable property sold in favour of the appellants.

9. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along

with requisitioned record.

10. The First Appellate Court has recorded the following reasons to reverse the judgment of the trial Court:-

- i. The notification published in the Haryana Government Gazette was required to be proved.
- ii. The certificate issued by the Executive Officer, Municipal Committee has been proved by examining Sh. Bal Kishan, Patwari, who is a casual worker and therefore, it is a weak form of evidence because primary evidence has not been produced.
- iii. The notification dated 31.12.1984, does not include the immovable property because the khasra numbers have not been included.
- iv. The layout plan has not been proved by examining Patwari or Girdawar.

11. In this case, the defendant has produced copy of Haryana Gazette published on 15.01.1985, In this gazette, the notification issued by Local Government Department, Haryana, dated 31.12.1984, has been published. On collective reading of the notification and the layout plan, it is evident that towards the Eastern side, municipal limits have been extended alongside Northern boundary of PWD Pacca Murthal Road upto a point at right angle, which is opposite to the North-east corner of field No.4962//3430. Then the South-East corner of field No.4962/3430/2 is considered as the boundary of municipal limit which falls in the South-West along with the Eastern boundary of field No.3429 upto its South-East corner has been extended.

12. On a careful perusal of layout plan, it is evident that the suit

property was included in the municipal limits of Sonapat. The Municipal Committee, Sonapat, issued a certificate certifying that the aforesaid khasra numbers fall within the municipal limits. This certificate was signed by the Executive Officer of the Municipal Committee. DW-2 Sh. Bal Kishan, Patwari was working with the Municipal Committee at the relevant time though on temporary basis. He has categorically stated that the Executive Officer signed the aforesaid certificate after he put the initials on the certificate. He also proved the same. Thus, it is proved that the disputed property is located within the municipal limits of Sonapat. This fact was corroborated by the recital in all the sale deeds executed in favour of the appellant as well as by payment of 2% additional stamp duty.

13. The First Appellate Court has clearly erred in overlooking the fact that the notification dated 31.12.1984, was published in the Haryana Government Gazette on 15.01.1985. As per Section 78 of the Indian Evidence Act, 1872, the notification published in the Government Gazette is a public document, which can be proved by its mere production. Furthermore, this document was proved by the revenue official, who was working for the Municipal Committee at that point in time. Thus, the first reason assigned by the First Appellate Court is erroneous.

14. With respect to the second reason assigned by the First Appellate Court, it may be noted that Sh. Bal Kishan, Patwari, had been examined as a witness. He has identified the signatures of the Executive Officer of the Municipal Committee. Thus, the First Appellate Court has erred while observing that the primary evidence namely the Executive Officer has not been examined. In this case, the certificate was not only prepared by him but also duly signed by him and thereafter the Executive Officer also put his initials on the same. It was a part of the official

document. The First Appellate Court has erred in observing that it is a weak form of evidence.

15. The First Appellate Court has also erred while observing that the notification dated 31.12.1984, does not include khasra numbers that have been sold. On a careful perusal of the notification, it is evident that the khasra numbers of the land located on boundary of the extended municipal limits in all the directions have been notified. The boundary line of the extended municipal limits have been drawn on the layout plan by connecting the aforesaid khasra numbers. The entire area falling inside the boundary line comes within the extended municipal limits. This notification was accompanied by a layout plan, which proves that the disputed property was included in the municipal limits. The learned counsel representing the respondent has failed to draw the attention of the Court to any provision in the Haryana Municipal Act, 1973, or the rules framed thereunder, requiring identification of the extended municipal area by referring to all the khasra numbers. The only requirement laid down in the said Act is the identification of the boundary lines of the municipal limits. When the boundary lines of the municipal limits are already identified, there is no need of describing the property by giving description of khata number, khatauni number, rectangle number and all the khasra numbers that are the part of the land inside the identified boundary line.

16. The last reason assigned by the First Appellate Court also lacks substance because Sh. Bal Kishan, Patwari while appearing in evidence has stated that the layout plan is signed by the Deputy Commissioner of the District and therefore, it is duly certified. There was no suggestion by the learned counsel representing the plaintiff to the Patwari that the aforesaid official layout plan was not in accordance with the municipal or the revenue

records.

17. Furthermore, the First Appellate Court has wrongly shifted the entire burden upon the defendant. The plaintiffs had come to the Court claiming superior right of presumption. The defendants led sufficient evidence to prove that the property is not pre-emptible because it is located within the municipal limits. Thereafter, the onus was on the plaintiff to prove that the documents produced by the defendant are not correct or the property in dispute falls outside the municipal limits of Sonapat.

18. Keeping in view the aforesaid discussion, the conclusion is inevitable. While allowing all the six appeals, the First Appellate Court’s judgments in all the six appeals is set aside and that of the trial Court is restored.

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

January 25th, 2024
Ay

(ANIL KSHETARPAL)
JUDGE

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