

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-446-2022 (O&M)
Date of Decision:-13.03.2024

PAWAN DALMIA

... Appellant

Versus

MUNICIPAL CORPORATION, HISAR

... Respondent

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Ms. Garima Modi, Advocate for
Mr. Rose Gupta, Advocate
for the appellant.

RITU TAGORE, J.

1. Being aggrieved by the concurrent findings returned against him, appellant-plaintiff has preferred this regular second appeal against the impugned judgment and decree dated 29.01.2019 passed by learned District Judge Hisar, affirming and upholding the judgment and decree dated 27.09.2018 passed by learned Civil Judge (Junior Division), Hisar.
2. For sake of convenience, parties to the *lis* hereinafter, shall be referred to by their original status in the suit.
3. Appellant/plaintiff instituted a suit for permanent injunction, seeking to restrain the defendant, Municipal Corporation Hissar, from demolishing any part of his house bearing No. 98/5 situated in Mohalla Birkhuwala, Patiala Chowk, Hisar including Northern and Southern Chabutra of the house, fully detailed in registered sale deed No. 4997 dated 27.01.1982.

4. It is *inter alia* pleaded by the plaintiff that his mother had purchased the suit property vide registered sale deed No. 4997 dated 27.01.1982 and in the year 1983, new house was constructed by demolishing the old construction and no encroachment was made upon any portion of public- street or public *Chowk* adjacent to the house in question. It is pleaded that officials of defendant Corporation, Hisar threatened to demolish his house including the area of *Chabutra* on the Northern and Southern portion of the house, on some false complaint of his neighbor without giving any show cause notice for removal of *Chabutra*. On 06.09.2016 the officials of the defendant came at the spot and threatened to demolish the portion of *Chabutra* of his house that necessitated him to file the suit.

5. Defendant upon appearance, filed written-statement and controverted the version of the plaintiff, besides raising objections regarding maintainability of the suit, suit being bad for want of notice under section 389 of the Haryana Municipal Corporation Act, 1994, *locus standi* of the plaintiff to file the suit etc. On merits, the defendant pleaded that plaintiff wants to grab the land of public- street and has illegally encroached upon the area of public street by constructing a ramp measuring 33'x4', for which the defendant issued notice under Section 408-A vide No. 3998/B1 dated 22.12.2016, but plaintiff did not remove an illegal encroachment. It is stated that land underneath *Chabutra* is a part of public-street and because of the encroachment made by the plaintiff, problem to negotiate the street is faced by public at large. By denying the averments of the plaintiff, pleaded for dismissal of the suit.

6. Replication to the written statement was not filed. Since parties were at variance, learned lower Court framed following issues:-

1. Whether the plaintiff is entitled for the relief of permanent injunction (prohibitory) as prayed for in the head note of the plaint?OPP
2. Whether the suit of the plaintiff is not maintainable?OPD
3. Whether the plaintiff has no cause of action to file the present suit?OPD
4. Whether the plaintiff has no locus standi to file the present suit?OPD
5. Whether the suit of the plaintiff is false and frivolous, as prayed for?OPD
6. Whether the civil court has no jurisdiction to try and decide the present suit?OPD
7. Whether the suit is bad for want of notice under section 389 of the Haryana Municipal Corporation Act, 1994?OPD
8. Whether the plaintiff illegally encroached upon the area of public street?OPD
9. Relief.

7. In order to prove the case, plaintiff examined Yashpal Clerk, DC office, Hisar as PWI and the plaintiff himself stepped into witness box as PW-2 and reiterated the version of the plaint and also produced sale deed Ex P1 and site plan Ex P2 on record and thereafter, closed the evidence. To rebut the case of the plaintiff, defendant examined Sunil Lamba as DW-1 and produced documents Ex.D1 photographs; Ex.D2 copy of reply to Notice

No.3998/B1 dated 22.12.2016; Ex. D3 copy of noting of MC, Hisar; Ex.D4 copy of Notice bearing No.3998/B1 dated 22.12.2016 under Section 408-A of MC Act, 1994; Ex.D5 copy of order dated 07.01.2015 and Ex.DX site plan and thereafter, closed the evidence.

8. After hearing the learned counsel for both the parties and going through the evidence, the learned lower Court dismissed the suit of the plaintiff. First appeal filed by the plaintiff was also dismissed by learned District Judge, Hisar, affirming the findings of the learned Trial Court below.

9. Learned counsel for the appellant submits that the Courts below erred in law in dismissing the suit of the plaintiff and inferences and conclusions drawn by the learned Courts below are wholly illegal, unjust, unsustainable in the eyes of law and are liable to be set aside. It is stated that learned Courts below failed to appreciate the evidence produced by the plaintiff, who categorically testified that he has not encroached upon any portion of public-street or public *Chowk* adjacent to his house. Learned counsel urged that there is a *Chabutra*, which is adjacent to the house of the appellant for the last 40 years and same is also mentioned in the sale deed Ex.P1 vide which the plaintiff purchased his house. It is stated that Courts below wrongly relied upon the evidence produced by the defendant/respondent and misconstrued the evidence presented by plaintiff and fell in error in dismissing the suit of the plaintiff. A prayer is made to allow the appeal and set aside the impugned judgments.

10. I have gone through the paper-book with able assistance of the learned counsel for the appellant.

11. Learned Courts below, have relied upon an unequivocal and categorical admission of the plaintiff (PW-2) that *Chabutra* is constructed in the public- street and due to that width of street has reduced. There is also a categorical finding of the Courts below that sale deed Ex.D1 though contain reference of *Chabutra*, it does not indicate that *Chabutra* is a part of the house of the petitioner and is owned by petitioner. The learned counsel failed to show that *Chabutra* was also sold to plaintiff. Notice Ex.D4 was issued by defendant to plaintiff to remove illegal encroachment on the public-street. Learned Appellate Court also noted that petitioner made a false assertion that no notice was given to him by the defendant but at the same time also admitted that he filed the reply to the notice given by defendant. Learned Appellate Court also observed that plaintiff failed to disclose length and breadth of the house and total area of the house of the plaintiff. The learned Courts below also found that the photograph Ex.D1 clearly depicts encroachment on the public-street due to *Chabutra* in question in front of the house of appellant/plaintiff and street has narrowed down in front of the house of the plaintiff. The learned counsel could not tell that before raising construction of his house plaintiff got sanctioned building plan of the house.

12. Learned counsel for the appellant failed to point out any mis-reading or mis-interpretation of evidence by the Courts below while arriving at the conclusions drawn against plaintiff. The learned counsel failed to controvert specific observation of the Courts below made with respect to the categorical admission made by the plaintiff that *Chabutra* is constructed in public-street. Admission, when clear and not withdrawn, is a good and material source of evidence to rely upon to decide a fact in issue. The learned

counsel failed to show that conclusions and inferences drawn by the Court are without any basis or on no evidence. Learned Appellate Court has rightly applied the ratio of judgment culled in **Mohan Lal vs. Mohan Singh, 1995 PLJ 48**, to decline the relief of injunction to the plaintiff, where in it is observed that possession of public property by individual or group of individual will not create any right and Court has to act as guardian of public property and should not pass order of injunction in favour of unauthorized encroacher.

13. All these factors taken together, makes no ground to form a different opinion to bring the findings of the learned courts below within the realm of perversity.

14. For the reasons aforementioned, I do not find any illegality or perversity, in the concurrent findings, which are based on application of oral and documentary evidence. No ground for interference is made out much less involvement of any substantial question of law.

15. Resultantly, there is no merit in the appeal and is, hereby, dismissed.

16. Pending miscellaneous application(s), if any, are also disposed of accordingly.

13.03.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No