2024:PHHC:030818

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-145-1995 (O&M)
Date of decision : 04.03.2024

Municipal Committee Bathinda ... Appellant(s)

Versus

Ram Lal ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present: Ms. Kavita Arora, Advocate for
Mr. S.C. Pathela, Advocate for the appellant.

Mr. D.D. Bansal, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the defendant-appellant - Municipal Committee Bathinda - against the judgments and decrees dated 30.01.1993 and 12.04.1994 passed by the Trial Court and the First Appellate Court, respectively.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent purchased a house through a registered sale deed dated 28.12.1989 from one Prem Chand and at the time of purchase it consisted of three rooms, verandah, kitchen, bathrooms and staircase. Thereafter he raised construction in the month of January 1990 and no land belonging to the Municipal Committee was encroached upon nor did he contravene the bye-laws of the Municipal Committee. However, a notice dated

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08.03.1991 was served upon the plaintiff-respondent for violation of provisions of Section 195 of the Punjab Municipal Act, 1911 (hereinafter referred to as the '1911 Act'). The plaintiff-respondent approached the Court for permanent injunction for restraining the defendant-appellant from demolishing the construction. The said suit was contested by the defendant-appellant on the ground that it was bad for want of notice under Section 41 of the 1911 Act and that the Civil Court had no jurisdiction. It was further the stand taken that construction had been started on 04.03.1991 and this construction was started without any prior sanction of the Municipal Committee nor site plan was got sanctioned. It was further the stand that the Sectional Officer of the Municipal Committee visited the site on 04.03.1991 and found illegal construction and on the basis of the said report, notices under Sections 195 and 195-A of the 1911 Act were served.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is owner in possession of the house in dispute and has constructed the house on the plot purchased by him ? OPP

2. Whether the plaintiff is entitled to restrain the defendant from demolishing any part of the House in dispute ? OPP

3. What is effect of non-service of notice u/s 49 of the Punjab Municipal Act, 1911 ? OPD

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4. Whether this court has no jurisdiction to try the suit ? OPD

5. Whether plaintiff is estopped from filing the suit by his own act and conduct ? OPD

6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD

7. Relief.

4. The Trial Court vide judgment and decree dated 30.01.1993 decreed the suit. Aggrieved by the same, an appeal was preferred before the First Appellate Court by the defendant-appellant which was also dismissed vide judgment and decree dated 12.04.1994. Hence, the present regular second appeal by the defendant-appellant.

5. Learned counsel for the defendant-appellant would contend that there was an illegal construction and that two shops were constructed in the residential area and hence notice was issued.

6. *Per contra* the learned counsel for the plaintiff-respondent has contended that construction was found to have been raised more than six months prior to issuance of the notices under Section 195 and 195-A of the 1911 Act and hence the Municipal Committee had no right to demolish the construction. It is further the contention of the learned counsel that notice was only for stopping the construction and after the receipt of the notice dated 08.03.1991, no construction had been raised.

7. I have heard the learned counsel for the parties.

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8. In the present case both the Court have concurrently found that the construction was raised in the month of January 1990 and the notices were served in March 1991. The learned counsel for the defendant-appellant has not been able to show any evidence on the record to the contrary. Further still, the impugned notice dated 08.03.1991 only stated that construction be stopped. The learned counsel for the plaintiff-respondent has contended that there was no construction which was made after the receipt of the notice dated 08.03.1991.

9. In view of the above, I do not find any irregularity and infirmity in the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

04.03.2024 **(ALKA SARIN)**
Yogesh Sharma **JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO

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