

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

RSA-1096-2020 (O&M)
Reserved on : 19.01.2024
Date of decision : 23.01.2024

AMRITSAR IMPROVEMENT TRUST ... Appellants

Versus

CHIEF KHALSA DIWAN CHARITABLE SOCIETY ... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kushagra Mahajan, Advocate for the appellant.

ALKA SARIN, J.

CM-3504-2020 & CM-3505-2020

1. For the reasons stated therein, the applications for condonation of delay in refiling and filing the appeal are allowed. Delay of 66 days in refiling and 15 days in filing the appeal is condoned.

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2. The present regular second appeal has been preferred by the defendant-appellant against the concurrent findings of both the Courts below whereby the suit of the plaintiff-respondent has been decreed.

3. Brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for mandatory injunction for directing the defendant-appellant to execute the sale deed in respect of land measuring 33825 sq. yds i.e. 495' x 601' + 629' situated in the area of Ajnala Road Expansion Scheme (Part-IV) of Amritsar Improvement Trust, Amritsar, which area is commonly known as Block-D, Ranjit Avenue, Amritsar. It was averred by the plaintiff-respondent that the defendant-appellant vide its memo no.AIT/SS/2733 dated 08.09.1993 allotted to it a piece of land measuring

approximately 7 acres in the Ajnala Road Expansion Scheme of Improvement Trust, Amritsar for the purpose of running a school. An agreement to sell was also executed between the parties and the plaintiff-respondent has since paid the price of the above stated land/school to the defendant-appellant vide different receipts. It was stated that the then Chairman of the Amritsar Improvement Trust had issued a certificate dated 31.03.2005 inter-alia certifying therein that the defendant-appellant has allotted the above said land to the plaintiff-respondent for the purpose of setting up an education institution vide allotment letter dated 25.08.1993 and entire due amount for the land has been paid by the plaintiff-respondent. The plaintiff-respondent submitted the proposed building plan for construction of the school building under the name and style of Shri Guru Harkrishan Higher Secondary School and same was sanctioned by defendant-appellant on 23.10.1996. Thereafter, when the plaintiff-respondent brought building material at the site for starting construction and to raise a boundary wall around the area, it was prevented from doing so by the authorities of the PWD Department. A third person namely Sh. Sarabjit Singh also raised a dispute qua land measuring 10 marlas claiming himself as owner and also filed a civil suit which was decided in his favour on 25.04.2003. It was further stated that an electricity connection on the land in dispute was also sanctioned in favour of the plaintiff-respondent by the PSEB. The defendant-appellant is under obligation to execute the sale deed in favour of the plaintiff-respondent in respect of said school site but the defendant was putting the matter off on one pretext or the other hence the suit. In its written statement the defendant-appellant raised preliminary objections

regarding maintainability, estoppel, locus standi, suppression of material facts. On merits it was submitted that an allotment letter was sent to President Chief Khalsa Diwan regarding land measuring 7 acres and the agreement to sell was executed on 03.11.1993 and as per agreement to sell the area to be sold by defendant-appellant to the plaintiff-respondent was 33,825 sq yds and that the amount had been deposited by the plaintiff-respondent with the defendant-appellant but no copy of the alleged letter dated 31.03.2005 as alleged by the plaintiff-respondent was available with the defendant-appellant. It was the stand taken that the construction was not raised by the plaintiff-respondent as per the sanctioned plan within time and as such the plaintiff-respondent was liable to pay a fine. Rest of the averments were denied and it was prayed that the suit be dismissed. On the basis of the pleadings, the following issues were framed :

1. Whether plaintiff is entitled for the relief of mandatory injunction as prayed for ? OPP
2. Whether the suit is not legally maintainable ? OPD
3. Whether the plaintiff has not approached court with clean hands ? OPD
4. Whether plaintiff is estopped by their own act and conduct to bring the present suit ? OPD
5. Whether the plaintiffs have no locus stand, competence and cause of action to file the present suit ? OPD
6. Relief.

4. The parties led their evidence and on the basis of the pleadings

and evidence, the Trial Court decreed the suit of the plaintiff-respondent. It was found that the defendant-appellant had nowhere stated as to what was the fine imposed by it upon the plaintiff-respondent for not raising the construction within the prescribed time as per the sanctioned plan nor had the defendant-appellant placed on the record any notice of recovery sent by it asking the plaintiff-respondent to deposit any amount of fine. The suit was held to be maintainable. Aggrieved by the judgment and decree dated 18.12.2017, an appeal was preferred by the defendant-appellant which also met with the same fate vide judgement and decree dated 26.04.2019 passed by the First Appellate Court. Hence, the present regular second appeal.

5. The learned counsel for the defendant-appellant has contended that the impugned judgements and decrees are illegal and against the evidence available on the record. It is argued that the plaintiff-respondent having failed to raise construction within the stipulated time, it was liable to pay a fine and since the fine was not paid the defendant-appellant could not be directed to execute the sale deed in favour of the plaintiff-respondent. It was contended that the suit deserved to be dismissed.

6. Heard the learned counsel for the defendant-appellant and perused the paperbook.

7. In the present case the plaintiff-respondent has successfully established that the land in dispute was allotted in it's favour by the defendant-appellant and the sale consideration also stood paid. However, for cogent reasons not forthcoming, the formal sale deed was not executed in favour of the plaintiff-respondent. The stand taken by the defendant-appellant that the plaintiff-respondent did not raise construction within time

and was thus liable to pay a fine is to be rejected. The defendant-appellant failed to establish before both the Courts as to what amount of fine was imposed on the plaintiff-respondent for the alleged delayed construction nor any document in this regard was proved on the file. As noticed by the First Appellate Court, the defendant-appellant has also not proved from any document that any such alleged fine was ever imposed on the plaintiff-respondent which it failed to deposit. The First Appellate Court held that “..... the appellant has neither disputed the allotment of the suit property in favour of the respondent nor it has disputed the payment of sale consideration alleged to have been already paid by the respondent. The appellant has not disputed the construction having been made in strict compliance of the sanctioned site plan”. Even before this Court the learned counsel for the defendant-appellant has been unable to point out to any evidence on the record to establish the arguments raised in this regular second appeal. That being so, the present appeal must necessarily fail. No other point was argued.

8. In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises for determination in the present case. The present regular second appeal which is wholly devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

23.01.2024

Aman Jain

(ALKA SARIN)
JUDGE

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