



SAO-41-2019(O&M)

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

SAO-41-2019(O&M)

Reserved on : 21.02.2025

Date of decision: 28.02.2025

Raj Kumar and others

..Appellants

Versus

Municipal Corporation, Faridabad and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L.Sarin, Senior Advocate
with Ms. Hemani Sarin, Advocate, for the appellants

Mr. Vishal Garg, Advocate for respondent no.1

ANIL KSHETARPAL, J.

Brief facts:-

1.1 The defendants assail the correctness of the First Appellate Court's order passed on 15.01.2019, which in turn, has reversed the trial court's order rejecting the plaint in exercise of its powers under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). It is clarified that the observation made by this Court while deciding the present appeal shall not be construed as the final expression on the merits of the case. While deciding the suit, the court will independently assess the evidence uninfluenced by the observations made herein.

1.2 The rejection of the plaint has been sought by the appellants on the following grounds:-

- i) The plaint does not disclose cause of action.



- ii) The subsequent suit is barred by doctrine of res judicata as envisaged under Section 11 CPC because previous injunction suit filed by the appellants was decreed by the trial court, which was affirmed by the First Appellate Court, second appellate court and the Supreme Court.
- iii) The order passed by the High Court stood merged with the final order passed by the Supreme Court. Hence, the liberty granted to the Municipal Corporation, Faridabad (hereinafter referred to as 'MCF') to file independent suit stands overruled/set aside.
- iv) The MCF, while filing the Special Leave Petition in the Supreme Court had taken the same grounds, which form part of the subsequent suit.

1.3 In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

1.4 The predecessor of the appellants filed a suit for the grant of decree of permanent injunction claiming to be owner in possession of the land comprised in Khasra no.137 measuring 8 kanal 6 marlas situated in Ballabgarh, District Faridabad. The defendants, 'Faridabad Complex Administration' (now MCF) alleged that the suit property is reserved for common purposes namely pond and is used for city park and playground.

The following issues were settled by the trial court:-

“1. Whether the plaintiff is owner in possession of the suit land? OPP.

2. Whether the defendants have got no right to change the nature of the property or raise any short of construction thereon? OPP.



3. *Whether the land in dispute is a public park and is possessed by the defendant? OPD.*
4. *Whether the plaintiff has no cause of action to bring the suit? OPD.*
5. *Whether the suit is not maintainable in the present form? OPD.*
6. *Whether the plaintiff has suppressed material facts from the court, if so its effect? OPD.*
7. *Whether the plaintiffs (Plaintiff No.11 (in particular) are estopped from filing the suit, as alleged in additional plea taken in the written statement? OPD.*
8. *Whether the suit of the plaintiff is barred u/s 50(4) of Faridabad Complex Regulation and Development Act ? OPD*
9. *Relief.”*

1.5 The trial court decreed the suit on 28.04.1995, which in appeal was affirmed by the First Appellate Court vide judgment dated 20.03.1999. RSA 3026-1999 filed by the Municipal Corporation was dismissed on 16.08.1999, with the following observation:-

“I do not subscribe to the argument raised by the counsel for the appellant. The Municipal Corporation never challenged the entries of the Jamabandi in any competent court of jurisdiction. The position as it stands is that the Jamabandis are still in the name of the respondents, who are owners in possession of the disputed property. There is a presumption of truth u/s 44 of the Punjab Land Revenue Act to the entries of the Jamabandi. In these circumstances, the concurrent findings of fact with regard to the possession of the respondents cannot be disturbed in the present appeal which is hereby dismissed with the observations that it will be always open to the appellant to prove separately the entries of the Jamabandi in favour of the respondents as illegal.”



SAO-41-2019(O&M)

1.6 After grant of leave, the Supreme Court dismissed the MCF's appeal on 06.08.2008, with the following order:-

“Heard learned counsel for both sides.

We do not find any valid ground to interfere with the concurrent findings of the courts below. The appeal is accordingly dismissed.

There shall be no order as to costs.”

1.7 The MCF filed the suit for declaration and for permanent injunction. It was claimed that as per the revenue record, the aforesaid property is recorded in the revenue record as a pond for common use. In the ownership column, the property is described as Shamlat Deh as Hasad Rasad Kabja Zameen. After the amendment of 1999 in the 'Haryana Municipal Corporation Act' the Shamlat Deh or property used as pond vests in the Municipal Corporation. The MCF also filed objections under Section 47 before the Executing Court, which were dismissed on 17.04.2010. The first appeal filed by MCF against order dated 17.04.2010 was dismissed on 25.05.2011. Civil revision filed by MCF was withdrawn. The appellants filed an application in the subsequent suit for rejection of the plaint, which was allowed by the trial court on 17.10.2015, which in appeal, has been reversed by the First Appellate Court. That's how this second appeal against order has been filed.

2. Analysis and Discussion:-

2.1 Order VII Rule 11 CPC lays down the grounds to reject the plaint at the threshold. The aforesaid grounds include non-disclosure of cause of action in a plaint and where the suit appears from the statement in the plaint to be barred by law. A careful perusal of plaint shows that the



SAO-41-2019(O&M)

plaintiff has disclosed the cause of action on the basis of the Haryana Municipal Corporation (Amendment) Act, 1999. In para 8 of the plaint, the plaintiff has disclosed the cause of action.

2.2 With respect to the second ground, it may be noticed that the previous suit was filed only for the grant of injunction though in the previous suit an issue with regard to ownership was framed, however, the High Court while dismissing the Municipal Corporation's second appeal has already made observations in this regard. The argument of the learned counsel that the aforesaid observations of the file shall stand set aside by the Supreme Court is debatable. The grounds taken by the MCF before the Supreme Court in the Special Leave Petition would not debar maintainability of the fresh suit because there is no adjudication on those aspects. With respect to dismissal of the objections, its effect shall be considered by the court after the evidence has been led. The issue of merger will also required to be examined by the court after granting opportunities to the parties to lead evidence. For rejection of the plaint under Order VII Rule 11 (d) CPC only the contents of the plaint are to be seen. At this stage, it would not be appropriate to take into account other facts.

2.3 Learned senior counsel has also relied upon judgment in **Kunhaya Ammed and others vs. State of Kerala and another (2000) 6 SCC 359** to support the submission on the aspect of merger. In the opinion of the Court, such aspect can be finally determined by the Court after the parties are granted an opportunity to lead evidence. He also relies upon the judgment passed in **Swamy Atmananda and others vs. Sh. Ramkishna Tapovanam and others AIR 2005 (SC) 2392**. On its careful reading, it is



SAO-41-2019(O&M)

evident that the Court examined the ouster of civil court jurisdiction in terms of Section 53 and 53 A of Tamil Nadu Recognized Private Schools (Regulation) Act, 1973. In that context, the Supreme Court made observations. Learned counsel has also relied upon the judgments passed in **Liverpool & London S.P.&I Association Ltd. vs. M.V.Sea Success I and another (2004) 9 SCC 512** and **T.Arivandandam vs. T.V.Satyapal and another (1977) 4 SCC 467**. It is evident that the Court, after forming opinion that vexatious and meritless suits are being filed, formed opinion. However, in this case, the later suit is based on a subsequent cause of action.

3. Decision:-

- 3.1 Keeping in view the aforesaid position, no ground to interfere is made out.
- 3.2 Hence, dismissed.
- 3.3 All the pending miscellaneous applications, if any, are also disposed of.

28.02.2025

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Whether speaking/reasoned

Whether reportable

(ANIL KSHETARPAL)
JUDGE

Yes/No

Yes/No