

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

**RSA No. 3571 of 2011
Date of decision : October 16, 2012**

Municipal Corporation, Ludhiana & another ...Appellants

Versus

Manohar Singh & another ...Respondents

CORAM: HON'BLE MR. JUSTICE L.N. MITTAL

Present: Mr. Harsh Aggarwal, Advocate,
for the appellants.

Mr. S.C. Thatai, Advocate
for respondent No.1.

None for respondent No.2.

L.N. MITTAL, J. (ORAL)

Defendants No.1 and 2 Municipal Corporation, Ludhiana
(in short, 'Corporation') and its Commissioner have filed this second appeal.

Suit was filed by respondent No.1-plaintiff Manohar Singh
against appellants/defendants No.1 and 2 and against respondent No.2
Zonal Superintendent of the Corporation as defendant No.3. The plaintiff
claimed to be owner in possession of the triangular plot in dispute adjoining
his flat No.25. The plaintiff claimed to have purchased it from Ludhiana
Improvement Trust (in short, 'the Trust') for ₹7420/- vide sale deed dated
30.05.1988. The plaintiff also raised some structures in the suit plot. He is

owner in possession thereof since then. The defendants threatened to dispossess the plaintiff from the said plot and to demolish his construction therein. Plaintiff sought permanent injunction restraining the defendants from doing so.

Defendants resisted the suit and pleaded that the plaintiff intended to encroach upon the suit plot which is part of 5.53 acres development scheme framed by the Trust. The said area stands now transferred to the Corporation for all purposes. Encroachment on the suit property, which is a park, cannot be allowed. Various other pleas were also raised.

Learned trial court dismissed the plaintiff's suit. However, first appeal preferred by the plaintiff has been allowed by lower appellate court and thereby suit filed by the plaintiff stands decreed for permanent injunction restraining the defendant-Corporation from dispossessing the plaintiff from the suit property and from demolishing or removing the construction therein. Feeling aggrieved, defendants No.1 and 2 have filed this second appeal.

I have heard learned counsel for the parties and perused the case file.

Counsel for the appellants contended that the sale deed relied on by the plaintiff was allegedly executed by Executive Officer of the Trust, but the Executive Officer of the Trust had no authority to sell the suit property to the plaintiff.

On the other hand, counsel for respondent No.1-plaintiff

emphatically contended that the plaintiff has duly proved execution of the registered sale deed dated 30.05.1988 Ex.P8 in his favour by Executive Officer of the Trust and, therefore, onus was on the defendants to prove otherwise. Reference was also made to Section 110 of the Evidence Act regarding onus of proof of ownership of the suit property.

I have carefully considered the aforesaid contentions. Even the lower appellate court has not recorded finding that plaintiff is owner of the suit property. The only finding that has been recorded is that plaintiff is in possession of the suit property and is, therefore, entitled to permanent injunction. However, without recording finding regarding ownership of the plaintiff over the suit property, blanket permanent injunction could not be granted to the plaintiff and the injunction could be granted only to the extent that the plaintiff shall not be dispossessed from the suit property except in due course of law. Consequently, judgment of the lower appellate court is perverse and illegal to this extent giving rise to substantial question of law.

As regards ownership of the plaintiff on the basis of sale deed dated 30.05.1988 Ex.P8, perusal thereof in the trial court file reveals that there is not even a recital in the sale deed that Executive Officer had been authorised by the Trust to execute the sale deed nor there is a recital that the Trust had passed any resolution to sell the suit land to the plaintiff. Plaintiff is basing his ownership on the basis of the said sale deed. Onus was on the plaintiff to prove the legality and validity of the said sale deed. The plaintiff has although proved execution of the said sale deed. However, it has not been proved that the Trust resolved to sell the suit land to the plaintiff or

authorised its Executive Officer to execute the sale deed. Consequently, on the basis of aforesaid sale deed, which was executed by Executive Officer of the Trust without any authority from the Trust, the plaintiff cannot be said to have acquired ownership of the suit property. Plaintiff has thus failed to prove ownership of the suit property, although his possession thereon is proved.

In view of the aforesaid, the instant second appeal is allowed partly. Judgment and decree of the lower appellate court are modified and suit filed by the plaintiff is decreed partly for permanent injunction restraining the defendants from dispossessing the plaintiff from the suit property and from demolishing or removing construction therein except in due course of law. The parties are left to suffer their respective costs throughout.

16.10.2012

Anand

**(L.N. MITTAL)
JUDGE**