

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

R.S.A. No.3263 of 1984 (O&M)

Date of Decision : 31.10.2007

Chandu Ram & Anr.

.....Appellants

Versus

Municipal Committee, Hissar

.....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. C.L. Ghai, advocate
for the appellants.

Ms. Samina Dhir, Advocate and
Mr. Sapan Dhir, Advocate
for the respondent.

VINOD K. SHARMA, J. (ORAL)

C.M. No. 3569-C of 1984

The appellants moved an application under Order 41 Rule 27 read with Section 151 C.P.C. for additional evidence by way of production of certified copy of the judgment passed by this Court in C.W.P. No. 1864 of 1984 decided on 20.9.1984.

It has been averred in the application that the evidence sought to be produced by way of additional evidence is necessary for the just and proper adjudication of the case as the property in dispute in civil suit was the same which is subject matter of the present suit. As the evidence sought to be produced by way of judgment of this Court passed inter se between the parties and is necessary for the adjudication of this appeal, the C.M. is allowed. The copy of the judgment passed by this Court is taken on record as Ex. "A".

C.R. No.3263 of 1984

This regular second appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit filed by the plaintiffs appellant for permanent injunction restraining the Municipal Committee from demolishing any portion of the house of the plaintiffs built on plot No. 940/9 Patel Nagar, Hissar, has been ordered to be dismissed.

The plaintiff appellants filed a suit by claiming that they were owner of the disputed house having purchased plot by way of sale deed dated 15.5.1973 and thereafter they constructed the said house on the said plot in the year 1974. It was claimed that no new construction was raised thereafter. The construction was said to be in accordance to the Building Bye Laws and further that no encroachment had been made on the Municipal Land or any other land by the plaintiff appellants. It was claimed that due to reason of enmity of some persons with the plaintiffs, a notice under Section 208 of the Haryana Municipal Act, 1973 was got issued to the plaintiffs alleging that they have made unauthorised construction. It was claimed that the allegations in the notice were against facts. The impugned notices issued by the Municipal Committee were illegal, void, ultra vires and without jurisdiction and was liable to be set aside on the ground that the plaintiff appellants were not the only owners of the disputed house and, therefore, the notices were required to be issued to all the owners. It was claimed that notices were not issued under the orders of the competent authority and it was reasserted that as the construction was made in the year 1974, the Municipal Committee had no right to issue any such notice. The notice was said to be vague. The right of the defendant respondent to demolish the house was also challenged.

On notice, written statement was filed admitting the issuance of the impugned notices and denied the allegations made in the plaint. It was pleaded in the written statement that the construction was made in October/ November 1980 without seeking necessary permission from the defendant respondent. It was claimed that it was on account of this, notice under Section 208 of the Haryana Municipal Act was issued for demolition of the disputed property. It was claimed that in stead of complying with the notice, the plaintiff appellants chose to file the suit. It was also the case of the defendant respondent that the plaintiff No.2 had submitted the site plan dated 2.6.1980 to the defendant for sanction but the said plan was not according to the spot so the same was returned on 19.6.1980, but the plaintiffs instead of submitting the correct site plan raised disputed construction without permission of the defendant. It was said that notice was issued to the plaintiffs on the basis of the report dated 4.11.1980 submitted by the Building Inspector. It was claimed that the notice to one of the co-sharer was a valid notice and further that the notice was issued under the order of Administrator of the defendant. It was asserted that building was constructed in the year 1980.

On the pleadings of the parties, the learned trial Court was pleased to frame the following issues :-

1. Whether the notice in question dated 10.11.1980 is illegal, void, ultra-virus, without jurisdiction and is not binding on the rights of the plaintiffs, as alleged ? OPP
2. Relief.

After the parties had led evidence, the learned trial Court was pleased to observe that no evidence was brought on record to prove that

there was other co-owner of the disputed property and, therefore, the ground of attack that the notices would also be issued to all the co-owner was not accepted. The second ground of challenge was also rejected in view of the statement made by Sh. R.K. Dara, Building Inspector, who appeared as DW1 to prove that the notice was issued under the authority of the Administrator. The challenge to the vagueness of the notice was answered against the plaintiffs by observing that no number of the plot was mentioned either in the plaint or otherwise, therefore, it cannot be said that the notice suffers from any vagueness. The learned trial Court also observed that the identity of the property was not disputed. The ground of the appellant that the house was constructed in the year 1974 was rejected on the plea that the oral evidence of the plaintiffs was not sufficient to prove this fact. The learned trial Court was pleased to hold that the evidence led on this point was not reliable. The evidence was disbelieved in view of the fact that Raja Ram one of the witnesses produced by the plaintiffs made a statement that the plaintiffs had instructed him to raise construction as the site plan had already been sanctioned by the Municipal Committee. It was also observed that no sanctioned plan was produced on record. The evidence was also found to be discrepant and in view of this finding the issue was decided against the plaintiffs and consequently the suit was ordered to be dismissed.

In the appeal the findings recorded by the learned trial Court were affirmed and the appeal was ordered to be dismissed.

The learned counsel for the appellant contents that the following substantial questions of law arises for consideration in this appeal, by this Court :-

1. Whether the Municipal Committee can issue notice under Section 208 of the Haryana Municipal Act ?
2. Whether the Municipal Committee can take contrary pleas in the writ petition and the civil suit filed qua the same property ?

In support of the questions of law, the learned counsel for the appellants has placed reliance on the copy of the judgment passed by this Court Ex. "A" to contend that the learned Courts below were in error in holding that the property in dispute was constructed in the year 1980. The said finding cannot be sustained as Ex. "A" shows that the averments made by the appellants to the effect that the construction has been raised on the disputed plot in the year 1974 stood admitted. An admission being the best evidence, the other evidence were liable to be ignored and it has to be held that the building was constructed by the appellant plaintiffs in the year 1974. In view of this, the Municipal Committee had no jurisdiction to issue notice under Section 208 of the Haryana Municipal Committee Act, in the year 1980. Consequently, both the questions of law are answered in favour of the appellants and against the respondent defendant.

Consequently the appeal is allowed, the judgment and decree passed by the learned Courts are set aside and the suit filed by the plaintiffs is ordered to be decreed with no order as to costs.

31.10.2007
'sp'

(VINOD K. SHARMA)
JUDGE