

Smt. Usha Sikand Vs Municipal Committee and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 3, 1998

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 39 Rule 1, Order 39 Rule 2, 115

Citation: (1998) 119 PLR 366 : (1998) 2 RCR(Civil) 246

Hon'ble Judges: Sat Pal, J

Bench: Single Bench

Advocate: P.S. Patwalia, for the Appellant; Onkar Singh, for the Respondent

Final Decision: Dismissed

Judgement

Sat Pal, J.

By this order, I am disposing of two revision petitions bearing No. C.R. 3905 of 1996 and 3906 of 1996 as the point of fact

and law raised in these two petitions are similar.

2. In this case the Executive Officer, Municipal Committee, Kapurthala, issued notice No. 52/ME, dated 19.4.1990 to the owner of building

known as IVEN HOE. Teh. Mal, Kapurthala, to show cause as to why the walls illegally constructed and the encroachment made in the Brigadier

House, Kapurthala, be not removed. Pritpal Singh, who is the husband of the petitioner filed a suit No. 161 of 28.4.1990 against Municipal

Committee, Kapurthala for permanent injunction against the aforesaid notice dated 19.4.1990. In the plaint, it was stated by said Priti Pal Singh

that the said building was owned and possessed by Maharaj Kanwar Ajit Singh who had allowed him to occupy the house and get it renovated

and construct the damaged portion of the northern wall. In this suit, the issues were framed on 13.11.1990. Case was fixed for plaintiffs evidence

on 16.10.1991, but on that date neither any person appeared on behalf of the plaintiff nor any of his witnesses were in attendance. Accordingly,

the evidence of the plaintiff was closed under Order 17 Rule 3 C.P.C. and the suit was dismissed with costs on that date. The aforesaid judgment

dated 16.10.1991 was not challenged by Priti Pal Singh.

3. During the pendency of the above case the suit property was purchased by present petitioner-plaintiff on 21.1.1991. On 6.1.1995, the

petitioner-plaintiff filed a suit against the Municipal Committee, Kapurthala, for permanent injunction restraining the Municipal Committee from

demolishing the northern wall measuring 154"-3"" of the suit premises and ornamental trees, and taking possession of about 69" of land inside the

said kothi. Alongwith the plaint an application under Order 39, Rules 1 and 2 C.P.C. was also filed seeking ad-interim injunction which was

dismissed by the learned trial Court vide order dated 24.4.1995. The learned trial Court observed that the disputed property fell under the town

planning scheme and thus the vendor of the plaintiff did not have the right to transfer the property which had fallen under the said scheme. Against

the said order dated 24.4.1995 the petitioner-plaintiff filed an appeal before the learned Additional District Judge, Kapurthala, who by his order

dated 16.9.1996 dismissed the appeal filed by the petitioner-plaintiff.

4. On 21.1.1995 the petitioner-plaintiff filed another suit against the Municipal Committee for permanent injunction restraining the committee from

interfering with the possession of the plaintiff by dismantling any portion of eastern and western walls of the suit property. Alongwith this plaint also

the petitioner-plaintiff filed an application under Order 39 Rules 1 and 2 C.P.C. for interim injunction which was allowed by the learned Sub Judge,

Kapurthala vide Order dated 10.4.1995 and the defendant committee was restrained from demolishing the boundary wall. Against the said Order

dated 10.4.1995 the Municipal Committee filed an appeal before the learned Additional District Judge, Kapurthala who by his Order dated

16.9.1996 has allowed the appeal filed by the Committee. The present petition have been filed against the Orders dated 16.9.1996 passed by the

learned Additional District Judge, Kapurthala.

5. Mr. Patwalia, the learned counsel appearing on behalf of the petitioner submitted that in case the interim stay prayed for by the petitioner-

plaintiff is not granted, the petitioner would suffer irreparable loss. He submitted that once the walls in question were demolished and the trees were

cut, the suits filed by the, petitioner would be rendered infructuous. He further submitted that the balance of convenience was also in favour of the

petitioner. He, therefore, contended that status-quo should be granted in favour of the petitioner and against the Municipal Committee.

6. The learned counsel further submitted that the earlier suit No. 161 of 28.4.1990 was not filed by the present petitioner who became the owner

of the suit property on 21.1.1991 and the same was filed by the husband of the petitioner in his capacity as Secretary/Caretaker of the then owner

of the house. He, therefore, contended that the dismissal of that suit should not have any bearing on the suits filed by the petitioner-plaintiff.

7. The learned counsel for the petitioner also submitted that the disputed land was acquired by the Municipal Committee for construction of a park

but now vide notification dated 14.1.1997, this area is not required by the State for making the park.

8. Mr. Onkar Singh, the learned counsel appearing on behalf of the Municipal Committee submitted that the Municipal Committee had issued

notice dated 19.4.1990 to the then owner of the suit property for the demolition of the walls which were illegally constructed by the owner of the

suit property and also for removal of the encroachment. He submitted that the then owner of the house had challenged the said notice in the Civil

Court in suit No. 161 of 28.4.1990 and the said suit was dismissed by the learned trial Court on 16.10.1991 and no appeal was filed against

judgment dated 16.10.1991. He submitted that the petitioner-plaintiff even according to her own case, purchased the property during the

pendency of the said suit and as such she was not entitled to be given any fresh opportunity by the Municipal Committee.

9. The learned counsel further submitted that the disputed property came under town planning scheme for the purpose of a road and a park and

according to the rules, the park and the road vested in the Municipal Committee. He further submitted that even in the replication filed on behalf of

the petitioner-plaintiff, it has been admitted by her that the walls in question have already been demolished. He, therefore, contended that the

petitioner-plaintiff was not entitled to any interim injunction. In support of his submission, the learned counsel placed reliance on a judgment of

Lahore High Court in *Nila v. Punun* AIR 1936 Lah 385.

10. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and have perused the record. As per

the case of the Municipal Committee, the area of land in dispute came under the town planning scheme meant for a park and as such this vested in

the municipal committee. Thus the vendor of the plaintiff who had been given notice of demolition of walls and for removal of encroachment, did

not have the right to transfer the property in favour of the plaintiff. As stated in the earlier part of this Order, even the suit filed on behalf of the

vendor challenging the validity of the notice, had been dismissed. The plaintiff who claims to have purchased the property during the pendency of

the said suit, is not entitled to any fresh notice from the Municipal committee. In view of these facts, the learned Additional District Judge has rightly

held that, the plaintiff is not entitled to interim injunction. The contention of the learned counsel of the petitioner-plaintiff that the land in dispute is

not now required for the park, can be decided only in the trial of the suit and not in these proceedings which have arisen from the application filed

by the petitioner-plaintiff for interim injunction. Further, in para-4 of the replication filed by the plaintiff in the suit filed on 21.1.1995, the plaintiff

herself has stated that during the pendency of the suit in the absence of the plaintiff, the defendants had illegally removed the wall on the western

side from its original position and had constructed it at a place about 14" away from the original position. In view of this admission also, the

petitioner-plaintiff can not be granted any interim injunction.

11. For the reasons recorded herein above, I do not find any merit in these petitions. Accordingly both the petitions are dismissed with no Orders

as to costs.