

(1999) 10 P&H CK 0024

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1218 of 1980

Municipal Committee

APPELLANT

Vs

Harsarup and Another

RESPONDENT

Date of Decision: Oct. 28, 1999

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2

Citation: (2000) 2 CivCC 69 : (2000) 124 PLR 697 : (2000) 1 RCR(Civil) 402

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Jagdev Sharma, for the Appellant; None, for the Respondent

Final Decision: Allowed

Judgement

R.L. Anand, J.

Municipal Committee, Pehowa, has filed the present Regular Second Appeal and it has been directed against, the judgment and decree dated 10.1.1980 passed by the Additional District Judge, Karnal camp at Kurukshetra who accepted the appeal of the plaintiff Shri Harsarup and set aside the judgment and decree dated 17.5.1979, passed by the Sub-Judge, 1st Class, Kaithal who dismissed the suit of the plaintiff for injunction as prayed for.

2. The brief facts of the case are that Shri Harsarup Singh filed a suit for permanent injunction against defendants No. 1 to 4, seeking to restrain defendant Nos. 1 to 3 from interfering with the possession of the plaintiff and defendant No. 4 over the suit property covered by the structure shown red in the site plan dated 16.12.1976 either by dispossessing them or by raising any construction. It was alleged by the plaintiff that the disputed piece of land measuring 69" x 63" as fully described in para No. 1 of the plaint belongs to him and defendant No. 4, Shri Basant Ram. They applied to defendant No. 1, Municipal Committee, for raising construction over the vacant site and the permission was accorded in the site plan dated 16.12.1976

through resolution No. 18(ii) in an emergent meeting held on 23.4.1966. Defendant No. 4 and plaintiff then sought extension of time for raising construction for defendant No. 1 and the same was granted through resolution No. 5 dated 19.3.1967. Plaintiff and defendant No. 4 then raised the construction within the time limit granted by defendant No. 1 and the said construction remained in existence for a period of about 8/9 years. It was further pleaded that plaintiff and defendant No. 4 were the owners of the site underneath the construction shown as red in the site plan dated 16.12.1976 and they were in possession since the time immemorial. It was further pleaded that defendants No. 1 to 3 were acting in an arbitrary manner and they illegally demolished the boundary wall of the said construction. It was further pleaded that after demolishing the construction defendants No. 1 to 3 threatened to dispossess the plaintiff and defendant No. 4 from their possession. It was pleaded that no part of the site covered by the structures vested in defendants No. 1 to 3 and their aforesaid action was un-called for an unwarranted by law. They did not desist from their design. Hence this suit.

3. The suit was contested by defendants No. 1 to 3. They filed a joint written statement and pleaded that place of land in dispute was part of the Municipal land measuring 90"x 80" and was reserved for the Municipal Park through resolution No. 9 dated 16.3.1968. It was further pleaded that the plaintiff obtained sanction of the map through the members of the committee who were interested in him but he was not allowed to construct anything over this property. It was, therefore, claimed that plaintiff and defendant No. 4 had no right whatsoever over the property in dispute nor they were ever in possession of the same. It was further claimed that plaintiff had no locus standi to file the present suit and that he had no cause of action. It was also pleaded that Civil Court had no jurisdiction to try the suit and the plaintiff did not serve any notice before the institution of the suit.

4. The plaintiff filed a rejoinder in which he reiterated his allegations made in the plaint by denying those of the written statement and from the pleadings of the parties the learned trial Court, framed the following issues:-

1. Whether the plaintiff and defendant No. 4 Basant Ram are the owners of the land in dispute? OPP
2. Whether this Court has no jurisdiction to try this suit? OPD
3. Whether any notice was required to be served to the Municipal Committee? OPD
4. Whether the plaintiff and defendant No. 4 were allowed to raise construction over the suit land by the defendant Municipal Committee? If so, to what effect? OPD
5. Whether the plaintiff had raised construction over the suit property to the knowledge of Municipal Committee? If so, to what effect? OPD
6. Whether the plaintiff and defendant No. 4 are in possession of the suit property? OPD

7. Relief.

5. The parties led evidence in support of their case and on the conclusion of the trial, issue No. 1 was decided against the plaintiff and defendant No. 4. Issues No. 2 and 3 were decided against the defendants No. 1 to 3. Under issue No. 4, it was held that raising of the construction has no effect over the rights of defendants No. 1 to 3 because plaintiff and defendant No. 4, have not been able to establish that they are the owners of the property in dispute. Issues No. 5 and 6 were also decided against the plaintiff. Resultantly, the suit of the plaintiff was dismissed vide judgment and decree dated 17.5.1979.

6. Aggrieved by the judgment and decree of the trial Court, plaintiff Shri Harsarup Singh, filed the appeal in the Court of Additional District Judge, Karnal, camp at Kurukshetra, which for the reasons given in paras No. 8 and 9 of its judgment, allowed the appeal and decreed the suit of the plaintiff and aggrieved by the said judgment and decree dated 10.1.1980, the Committee has filed the present Regular Second Appeal.

7. I have heard Shri Jagdev Singh, learned counsel for the appellant and with his assistance have gone through the records of the case.

8. Before, I proceed further in the matter, I would like to quote invarbatim paras No. 8 and 9 of the judgment of the first appellate Court:-

"8. The first point to be seen is whether any document was placed by the plaintiff on the file to show that he is owner of the property. It was contended by the counsel for the plaintiff-appellant at the bar that no such document is in possession of the plaintiff. The second point which arises is whether any document has been placed on the file by the defendants to show their ownership. No such document has been placed on the file by the defendants also. Defendants only placed on the file Ex. D4 a copy from the register wherein this property is shown as belonging to the committee. The entry relates to have been made in the year 1968. It was admitted by DW2 Ram Raj Overseer of the Municipal Committee, Pehowa that there is no entry in the register of the Committee about this property prior to 1968. That the disputed property was shown for the first time by the committee to be owned by it in the register in February, 1968. He also admitted in cross-examination that he does not know as to how committee acquired title to the above land. The statement of this witness shows that the property was shown for the first time by the committee to be owned by it in that register in February, 1968 i.e. 2 years after sanctioning of the plan of the plaintiff in the year 1966. The statement also shows that committee has no document to show as to how they acquired title to the above property in the year 1968. The question arises whether Committee has acquired title to the above property or not. In Section 56 of the Punjab Municipal Act, 1911, there was a provision that committee will maintain an inventory and a map of all the properties which vest in the committee. As no copy of the plan or inventory kept by

the committee to show that this property belongs to it prior to February, 1968 has been placed on the file than a presumption will be drawn that no such document exists and it will be held that the Committee was not the owner of the above plot prior to February, 1968. Thereafter, how the Municipal Committee acquired title of the above plot, it was for the committee to explain which has not been done. So I am of the view that finding of the trial Court that Committee was not required to prove its ownership is not correct. Rather in this case, when this case rests on the ownership of the property, it was for the committee also to show their title on the above property. As Committee has failed to prove its ownership of the property, so it cannot be held that Committee is the owner of the above property.

9. Now, the question arises that is the effect of granting permission by the Committee to the plaintiff to raise construction on the above plot. Trial Court held that Committee permitted the plaintiff to raise construction but refused to draw presumption of ownership from this act. I do not agree with this finding of the trial Court. The plea of the defendant in the written statement was that the plaintiff was able to procure sanction in collusion with members who are under his influence. What relation the plaintiff had with the members was not proved on the file by the defendant nor any attempt was made by the defendant to show any connection between the plaintiff or the members who passed the resolution according sanction. When sanctioning of the plan has not been proved to have been obtained by the plaintiff by undue influence, then it will be held that the committee granted permission to the plaintiff to raise construction. This sanction can only be allowed if the plaintiff was owner of the plot and the Committee does not claim any right in the above property. If the Committee was the owner of the above plot then no such presumption could be allowed to the plaintiff. In the absence of any evidence being adduced by the defendants about their title, this sanctioning of the plan would be relevant to draw an inference about ownership of the plaintiff of the above plot. More so, when sanction granted has not been revoked. The position would have been different if the defendant could show their title, then defendants could say that sanction was given by mistake by their officials but in the instant case, as committee has not been able to prove ownership, then question of any mistake on the part of official of the defendant does not arise. This sanctioning of the plan of the plaintiff by the Committee for permission to construct will show an indirect admission on the part of the defendants about title of the plaintiff. The plaintiff was not only granted permission to raise construction but on his subsequent request, time to construct was also extended vide resolution passed in the year 1967. The committee only passed a resolution thereafter in 1968 to reserve this land as a park. The position could have been different had the resolution been passed by the Committee prior to 1966 to reserve it as a park. For the reasons detailed above, I am of the view that trial Court erred in holding that the plaintiff is not the owner of the suit plot. From the sanctioned plan, it can be inferred that title of the plaintiff was admitted by the Committee. So, I hold that the plaintiff is owner of the above plot

and he being owner will be deemed to be in possession of the above plot also. So, finding of the trial Court on issues No. 1 and 6 are liable to be set aside and are set aside as such."

9. The counsel for the appellant submitted that the entire approach of the first appellate Court was patently illegal. The first appellate Court had proceeded with the appeal as if the Committee was the plain tiff and that Shri Harsarup Singh and defendant No. 4 had no role to play. The counsel submitted that it was for the plaintiff and defendant No. 4 to establish that they were the owners of the site measuring 69" x 63 feet. If they do not establish their title over this property, they cannot take the benefit of the lapse committed by the Committee when it sanctioned the site plan. I subscribe to the view taken up by the counsel for the appellant. The plaintiff has build his case on the site plan which was sanctioned by the Municipal Committee. Apart form that, there is no evidence led by the plaintiff or defendant No. 4 as to how they became the owners of the property. The plaintiff has to stand on his own legs. It was the specific case of the Committee that plaintiff has been able to obtain the sanction by misrepresentation and in connivance with some employees of the Committee. It has come in the evidence that in March," 1968, it was declared by the Committee that suit property was a Municipal park. There is no presumption under the law that since the Committee has sanctioned the site plan, therefore, it has to be presumed that the site belongs to a particular person and not to the Committee. Once the plaintiff fails to establish about the acquisition of title with respect of the site in dispute and has managed the sanction of the site plan by wrong representation, the Committee has the right to with draw such sanction and further has the right to demolish any encroachment which was made by the plaintiff and defendant No. 4.

10. In the opinion of this Court, the first appellate Court has put the entire blame upon the committee when it granted the sanction to the site plan at the first instance and then also passed a resolution vide which the time to construct was extended. By these acts, the committee is not estopped from showing that plaintiff, infact, is not the owner of the site regarding which the map was sanctioned. The title cannot be created for the benefit of the plaintiff by inferences. Plaintiff and defendant No. 4 had to establish their title either by way of acquisition or by devolution or by other circumstances which matured into title. As the plaintiff and defendant No. 4 have miserably failed to established their title with respect to the disputed site, therefore, the suit was rightly dismissed by the trial court. In this view of the matter, I allow this appeal, set aside the judgment and decree of the first appellate Court and restore the judgment and decree of the trial Court and dismiss the suit of the plaintiff-respondent with no order as to costs.