Municipal Council Vs Hardayal Singh and Another

None

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 23, 2010

Acts Referred:

Evidence Act, 1872 â€" Section 101 , 102, 103#Punjab Municipal Act, 1911 â€" Section 84, 85

Citation: (2010) 08 P&H CK 0436

Hon'ble Judges: K.C. Puri, J

Bench: Single Bench

Judgement

K.C. Puri, J.

There is a delay of 24 days in filing the present appeal. The same stands condoned on the grounds mentioned in the

application.

2. There is a delay of 309 days in re-filing the present appeal. The same also stands condoned on the grounds mentioned in the application.

3. This is a regular second appeal directed by the defendant-appellant against the judgment dated 4.3.2009 passed by Sh. Inderjit Singh, District

Judge, Patiala, vide which the appeal preferred by the defendantf-appellant against the judgment dated 11.1.2007 passed by Sh. Kuljit Pal Singh,

Civil Judge (Junior Division), Rajpura, was dismissed.

4. Hardayal Singh filed a suit for declaration and permanent injunction to the effect that bill dated 8.7.1999 bearing No. 34, imposing demand of

Rs. 5,085/- towards house tax, is illegal, null and void, without jurisdiction.

5. The case of the plaintiff is that he purchased the land measuring ? biswas out of land comprised in Khasra No. 1383/836/1/1(0-3) situated in

village Dhakansu Kalan, which is outside the municipal limits of Municipal Council, Rajpura. The demand of Rs. 5,085/- towards house tax is not

valid.

6. Notice of the suit was given to the defendants, who filed written statement taking preliminary objections that civil court has no jurisdiction to try

the present suit as per provisions of Section 84 of the Punjab Municipal Act, 1911. It is submitted that property is within municipal limits and

notification dated 6.9.1994 has been published. Prayer has been made for dismissal of the suit.

7. Replication was filed controverting the pleas of the written statement reiterating the stand taken in the plaint.

8. From the pleadings of parties, following issues were framed:

1. Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP

2. Whether the plaintiff is entitled to the relief of permanent injunction? OPP

3. Relief.

9. The plaintiff Hardayal Singh himself appeared as PW-1. The defendants examined DW-1 Sohan Lal, Junior Assistant Municipal Council,

Rajpura, DW-2 Surinder Singh, Clerk, Municipal Council, Rajpura.

10. Learned trial Court has taken up issues No. 1 and 2 together and came to the conclusion that suit property is not situated within the municipal

limits and as such the plaintiff is not liable to pay the house tax and the suit of the plaintiff was decreed vide judgment dated 11.1.2007 passed by

Sh. Kuljit Pal Singh, Civil Judge (Junior Division), Rajpura.

11. Feeling dissatisfied with the above said judgment, the defendant-appellant filed the Ist appeal which was heard and dismissed by Sh. Inderjit

Singh, District Judge, Patiala, vide judgment dated 4.3.2009, upholding the finding of the trial Court that property is not situated within the

municipal limits.

12. Feeling dissatisfied with the judgments dated 4.3.2009 and 11.1.2007, referred to above, the defendant-appellant Municipal Council, has

preferred the present regular second appeal.

13. The appellant in para No. 12 of the grounds of appeal has stated that following substantial questions of law are involved in the present regular

second appeal:

a) Whether the jurisdiction of the Civil Court is barred in a matter challenging imposition of house tax in view of the provisions contained in Section

84 of the Punjab Municipal Act, 1911?

b) Whether the Civil Court wrongly exercised jurisdiction in the matter in view of the fact that the respondent/plaintiff had already challenged the

imposition of the house tax unsuccessfully by filing an appeal in the Court of the Additional Deputy Commissioner, in accordance with the

provisions of Sections 84 and 85 of the Punjab Municipal Act,1911?

c) Whether the judgments of the Courts below wherein it has been held that the onus to prove that the site in question was within the municipal

limits was upon the appellant/defendant are in conflict with Section 101 to 103 of the Indian Evidence Act?

14. Learned Counsel for the appellant has submitted that jurisdiction of the Civil Court is barred in the matter challenging the imposition of house

tax in view of Section 84 of the Punjab Municipal Act. The Civil Court has wrongly exercised the jurisdiction in the present case. It is contended

that onus to prove the fact that property is not within municipal limits is upon the plaintiff. No demarcation report has been produced on the file.

So, prayer has been made for acceptance of the appeal. To support his contention, Learned Counsel for the appellant has relied upon the authority

reported as Municipal Corporation and Others Vs. Raghbir Kaur and Another, .

15. I have carefully considered the submissions made by Counsel for the appellant and have also gone through the file of the case.

16. There is a concurrent finding of fact recorded by both the Courts below that property is not within municipal limits and as such the Municipal

Council, Rajpura is not competent to levy the tax upon the property of the plaintiff. That being a finding of fact cannot be interfered in the regular

second appeal. It is settled law that onus is always upon the party who alleges the same. The appellant has alleged that property is within the

municipal limits. The notification clearly shows that Khasra No. 836 is not included, which is owned by the plaintiff. Since the property is not within

the municipal limits and as such both the Courts below have rightly given the concurrent finding of fact that appellant is not entitled to impose the

house tax. The authority in Raghbir Kaur''s case (Supra), is distinguishable to the facts of the present case, as in that case it was not the dispute

whether the property is within the municipal limits.

17. So, in view of the above discussion, I have no hesitation in holding that no substantial question of law has arisen in the present appeal.

18. Consequently, the appeal is without any merit and the same stands dismissed.

19. All the miscellaneous applications also stand disposed of.