

(2014) 08 P&H CK 0306

High Court Of Punjab And Haryana At Chandigarh

Case No: RSA No. 3630 of 2010 (O&M)

Archna Bhardwaj

APPELLANT

Vs

Haryana Urban Development
Authority

RESPONDENT

Date of Decision: Aug. 8, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Haryana Urban Development Authority Act, 1977 - Section 17, 17(5), 50, 50(2)

Hon'ble Judges: Rameshwar Singh Malik, J

Bench: Single Bench

Advocate: R.S. Sihota, Sr. Advocate and B.R. Rana, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Rameshwar Singh Malik, J.

Plaintiff, having been non-suited in her suit for declaration and permanent injunction by both the learned courts below, recording concurrent findings, has approached this Court by way of instant regular second appeal.

2. Briefly put, facts of the case are that plaintiff was allotted a commercial plot measuring 23.630 sq. meters pursuant to a public auction, vide allotment letter No. 1870 dated 14.10.1998. Allottee-appellant paid 25% of the total costs at the time of allotment and thereafter no payment was made. The respondent authorities issued notices to the allottee-appellant and after following the procedure laid down under the relevant provisions of law, resumption order was passed against the plaintiff. Plaintiff filed the suit for declaration and permanent injunction.

3. Having been served in the suit, defendant appeared and filed its written statement raising more than one preliminary objections including availability of statutory appeal under the Haryana Urban Development Authority Act, 1977 ("HUDA Act" for short). On merits, claim of the plaintiff was totally denied. Concealment of

facts was alleged and dismissal of the suit was prayed for.

4. On completion of pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for declaration and injunction as prayed for? OPP

2. Whether the present court has no jurisdiction to entertain the present suit? OPD

3. Whether the plaintiff has no locus standi to file the present suit? OPD

4. Whether the suit is bad for want of concealment of material facts before the court? OPD

5. Whether the plaintiff has no cause of action to file the present suit? OPD

6. Relief.

5. To substantiate their respective stands taken, both the parties led their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that plaintiff has failed to prove her case. Accordingly, her suit was dismissed vide impugned judgment and decree dated 18.10.2007. Feeling aggrieved, plaintiff filed her first appeal, which also came to be dismissed by the learned Additional District Judge vide impugned judgment and decree dated 16.12.2009. Hence this appeal, at the hands of the plaintiff.

6. Learned senior counsel for the appellant submits that plaintiff has duly proved her case. Cogent evidence has been brought on record, which was sufficient to decree the suit. However, since both the learned courts below have failed to appreciate the true facts of the case as well as the evidence available on record, the impugned judgments and decrees were not sustainable in law. He prays for setting aside the impugned judgments and decrees passed by the learned courts below, while allowing the present appeal.

7. Having heard learned senior counsel for the appellant at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that in the given fact situation of the present case, no interference is warranted at the hands of this Court, while exercising its appellate jurisdiction u/s 100 of CPC ("CPC" for short), because no question of law much less substantial question of law has been found involved in the instant case. To say so, reasons are more than one, which are being recorded hereinafter.

8. It is a matter of record that plaintiff was having a remedy of statutory appeal u/s 17(5) of the HUDA Act. It is also not in dispute that plaintiff did not file any appeal and straightway filed the present suit before the learned civil court. The only issue that falls for consideration before this Court is whether in such a situation, the

learned civil court will have jurisdiction to try the suit filed by the plaintiff-appellant.

9. Section 50 of the HUDA Act provides direct answer to the issue and the same reads as under:-

"50. Finality of orders and bar of jurisdiction of civil courts:- (1) Save as otherwise expressly provided in the Act, every order passed or direction issued by the State Government or order passed or notice issued by the Authority or its officer under this Act shall be final and shall not be questioned in any suit or other legal proceedings.

(2) No civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter the cognizance of which can be taken and disposed of by any authority empowered by this Act or the rules or regulation made thereunder."

10. A bare reading of the above-said provisions of law would show that the learned civil court was not having any jurisdiction to try the suit filed by the appellant. This was the reason that a specific issue No. 2 was framed in this regard. Issue No. 2 came to be decided against the plaintiff by both the learned courts below holding that the civil court was not having any jurisdiction to entertain the present suit. When a pointed question was put to the learned senior counsel for the appellant in this regard as to how the suit was maintainable once the trial Court was not having jurisdiction, he had no answer and rightly so because it was a matter of record. Basic defect in the suit was based on statutory provisions of law referred to hereinabove. Having said that, this Court feels no hesitation to conclude that both the learned courts below committed no error of law, while passing their respective impugned judgments and the same deserve to be upheld.

11. So far as the non-payment of amount for the commercial site in question is concerned, after initial payment of 25% of the sale consideration, plaintiff-appellant did not pay any amount thereafter before the plot in question was resumed. Any offer to make the entire payment even alongwith interest after passing of the resumption order would be of no consequence. Once the plaintiff has taken the possession of the commercial site, he raised the construction thereon and had been running his business from the said commercial plot, non-payment of remaining amount even thereafter would render the plaintiff totally disentitled, for any kind of relief. It is so said, because plaintiff never made any attempt to discharge his financial liability, for the same commercial plot from which he was earning profits by doing the business. Thus, plaintiff had no case either on facts or in law. Learned courts below have rightly recorded concurrent findings of fact in this regard and the impugned judgments deserve to be upheld, for this reason also.

12. Before arriving at a judicious conclusion, the learned Additional District Judge rightly appreciated the true facts of the case as well as the evidence brought on record. Cogent findings recorded in paras 12 and 13 of the impugned judgment passed by the learned first appellate court, read as under:-

"I have given thoughtful consideration to the rival submissions made by the Id. counsel for the parties. The allotment letter Ex. PW/1 shows that the balance amount of Rs. 9,00,000/- was to be paid within 60 days or in 10 half yearly installments along with interest. It is admitted that the plaintiff did not deposit any installment with the defendant. Section 17 of HUDA Act provides that where any transferee makes defaults in the payment of any consideration money or any installment, the Estate Officer may make an order resuming the land after issuing the show cause notice and providing opportunity of personal hearing to the transferee. In the present case DW 1 J.C. Bhatia has stated that the booth in question was resumed because plaintiff failed to deposit the outstanding amount of Rs. 11,33,500/- with the defendant. Plaintiff has not appeared in the witness box to prove that the requisite notices u/s. 17 of the Act were not served upon her. The General Power of Attorney of plaintiff cannot say that notices were not received by the plaintiff. Moreover, in the original suit the plaintiff had challenged the show cause notices dated 11.06.2001 and 20.06.2001 and it apparently shows that those notices were served upon the plaintiff. Despite receipt of show cause notice, the plaintiff did not deposit the balance amount and therefore, it cannot be said that the order of resumption is illegal

Now the question for determination is whether civil court has jurisdiction to entertain the suit. Section 17(5) of HUDA Act provides that any person aggrieved by the order of the Estate Officer may file an appeal to Chief Administrator within 30 days. Section 50(2) of the Act provides that no civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter the cognizance of which can be taken and disposed of by any authority empowered by this Act. In the present case the order of resumption could be challenged before the Chief Administrator but the plaintiff did not file appeal before the Chief Administrator. Therefore, it is concluded that the jurisdiction of civil court is expressly barred.

13. During the course of hearing, learned senior counsel for the appellant failed to point out any jurisdictional error or patent illegality apparent on the record of the case, in either of the impugned judgments. He also failed to put into service any substantive argument, so as to convince this Court to take a different view than the one taken by the learned courts below. Further, no question of law much less substantial question of law has been found involved in the present case, which is sine qua non for interference at the hands of this Court, while exercising its jurisdiction u/s 100 CPC. Thus, the impugned judgments and decrees passed by the learned courts below deserve to be upheld, for this reason as well.

14. No other argument was raised.

15. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out. Consequently, the

impugned judgments and decrees passed by the learned courts below are upheld.

16. Resultantly, the instant appeal stands dismissed. Pending application also stands disposed of. No costs.