

(2002) 02 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1740 of 1997

Haryana State and Others

APPELLANT

Vs

Ashwani Kumar and Others

RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Haryana Development and Regulation of Urban Areas Act, 1975 — Section 7

Citation : (2002) 4 RCR(Civil) 351

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : D.P. Singh, for the Appellant; C.B. Goel, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, J.—The Regular Second Appeal has been filed against the judgment of concurrence. The plaintiff in his endeavour succeeded when his suit for injunction was decreed by the trial Court on 26.3.1994. This judgment and decree passed by the trial Court has been affirmed by the 1st Appellate Court in an appeal preferred by the appellants herein.

Brief facts of the case reveal that Ashwani Kumar and others (hereinafter referred as "the plaintiffs") filed a suit for injunction pleading therein that they are owners in possession of agricultural land measuring 9 Kanals 16 Marias situated in village Bastaa, Teh. and Distt. Karnal. This land was purchased by way of registered sale deed executed on 30.5.1985 and registered on 11.6.1985. They further pleaded that they received a notice from defendants dated 12.12.90 u/s 10 of the Haryana Development and Regulation of Urban Areas Act, 1975. After this, defendants a letter dated 25.2.1991 calling upon the plaintiffs to demolish the building by mentioning therein that plaintiffs had erected the building on the land in question falling within the urban area of Gharaunda in contravention of the provisions of Section 7 Haryana Act No. 8 of 1975 and thus asked the plaintiffs to stop construction and to restore the land to its original position. In view of the plaintiffs, letters aforesaid were illegal, void and without

jurisdiction, inasmuch as the land in dispute had not been notified as urban area nor declared or notified as a colony as defined under Clause (c) of Section 2 of the Act and that no plot had been carved out of the land in question and further Section 7 of the Haryana Development and Regulation of Urban Areas Act, 1975 was not applicable as the same presupposes existence of colony but there exists no colony on the suit land.

2. The matter was contested by the appellants (hereinafter referred as "the defendants") by primarily pleading that no licence has been obtained by the plaintiffs u/s 3 of the Haryana Act No. 8 of 1975 to raise construction and it was a case of violation of Section 7(i)(ii)&(iii) of the Act. It has been denied that notices issued on 12.12.1990 and 25.2.1991 are liable to be set aside.

3. Pleadings of the parties gave rise to the following issues:-

1. Whether the plaintiffs are entitled to the relief of injunction as claimed as alleged? OPP
2. Whether the civil court has got no jurisdiction in view of the Section 15 of the Haryana Development and Regulation of Urban Areas Act? OPD
3. Whether the plaintiffs have not locus stand! to file the present suit? OPD
4. Whether the plaintiffs have got no cause of action? OPD
5. Whether the suit of the plaintiffs in the present form is not maintainable? OPD
6. Whether the plaintiffs have not exhausted the alternative remedy of appeal as provided u/s 19 of the Act No. 8 of 1975? OPD
7. Whether the suit is not maintainable for want of notice u/s 80 CPC? OPD

8. Relief.

4. All that has been contended on behalf of appellant/state is that suit for permanent injunction was filed without first issuing notice u/s 80 of CPC and the same as such could not be entertained and tried. I find no merit in this contention of the learned counsel whatsoever as it is admitted during the course of arguments that by showing emergency in the matter, plaintiffs did obtain permission to file the suit without issuing notice u/s 80 of CPC prior in point of time. It was a case of emergency as the building erected by the plaintiffs was threatened to be demolished. In any case, there is no challenge to the order granting permission to the plaintiff to institute the suit without first issuing notice u/s 80 of Code of Civil Procedure. The aforesaid contention of learned counsel is thus repelled.

5. The second and last contention raised by the learned counsel for the appellants/State is that there was no question for Courts below to hold that provisions of the Act aforesaid were not applicable as the same do require permission for change of land use. I find this contention of the learned counsel also to be devoid of any merit. It is conceded position that for applicability of the

provision of the Act aforesaid are in question has to be within ambit of urban area. This matter has been dealt with by Appellate Court in para 11 of the judgment. The same reads thus:-

"There is no evidence on the file to conclude that the land measuring 9K-16M fully described in para No. 1 of the plaint falls within the ambit of Urban area as defined in Haryana Act No. 8 of 1975, Ex.DW2/A, site plan has been prepared by Harbhajan Singh DW, but this site plan nowhere depicts the present Rect. No. 77 and Rect No. 76 in which the suit land is admittedly comprised. It was incumbent upon the person who prepared the site plan to specify the above referred Rectangle. Just by making a red point in the site plan, the defendant-appellants cannot be said to have succeeded to pin point the actual rectangles and Khasra numbers and the site in dispute. Similarly in the notification Ex-D8 there is no mention of land comprising in Rectangle No. 77 and 76 of area. The defendants have not succeeded to connect this notification with the suit land comprised in Rect. No. 77 Khasra No. 21/1 and Rect. No. 76, Killa No. 25/1. It has been admitted by Harbhajan Singh DW2 who prepared the site plan that he never visited the spot and had prepared the site plan only on the basis of Musavi which was in the revenue office. He has further stated that in the cross-examination that the municipal boundary which has been shown in Ex.DW2/A was not present in the Musavi. He made it clear that he did not verify the Masavi limits and prepared the site plan as per the record"available. In this view of the matter, the learned trial court has rightly observed that the site plan prepared by DW/2 Harbhajan Singh cannot be relied upon especially when Harbhajan Singh did not visit the actual spot. So, it can be said that the suit land does not fall within the ambit of Urban Area as defined in Haryana Act No. 8 of 1975".

6. Nothing at all could be argued to detract from the findings of fact extracted above.

7. No merit. Dismissed.

8. Parties are, however, left to bear their own costs.