
(2016) 03 P&H CK 0290
In the Punjab And Haryana At Chandigarh
Case No : R.S.A. No. 1767 of 2012 (O&M)

Raj Bahadur and others	Vs	APPELLANT
Haryana Urban Development Authority (HUDA) and others		RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Haryana Urban Development Authority Act, 1977 — Section 79

Citation : (2016) 3 PLR 218

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : Mr. P.R. Yadav, Advocate, for the Appellant; Mr. Sanjay Vij, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Amit Rawal, J. (Oral) - The appellants-plaintiffs are aggrieved of the dismissal of the suit seeking restraint order against the defendant(s) from construction of any shop in front of shop No.88, pavement shown in red colour in the commercial complex, Sector 12-A, Gurgaon or alter the pavement in any manner whatsoever, has been dismissed by both the Courts below.

2. Mr. P.R. Yadav, learned counsel appearing on behalf of the appellants-plaintiffs has vehemently and assiduously argued that HUDA did not adhere to the provisions of Section 79 of the Haryana Urban Development Authority Act, 1977, as before causing any amendment in the sectoral plan, objections were required to be called for by causing a publication in the newspapers, in these circumstances, the suit was filed, even the witness of the HUDA admitted this fact. In support of his contentions, he has drawn the attention of this Court to the site plan to show that by carving out the plot and the allotment to the defendant Nos.2 and 3, the business of the appellants plaintiffs would seriously be effected as he had allotted two shops bearing Nos.85 and 88, thus, urges this Court to formulate the substantial questions of law as culled out in the

memorandum of appeal.

3. Mr. Sanjay Vij, learned counsel appearing on behalf of respondent Nos.2 and 3, the allottees of shop bearing No.90, submits that there is width of 4 ft. of pavement between the shop Nos.87 and 88, whereas, in front shop No.85, the pavement is 10 inches wide, this fact is evident from the site plan Annexure A-2, even otherwise, there is candid admission of the appellants plaintiffs, viz-a-viz no reduction of any width of the pavement. He submits that the suit simpliciter for permanent injunction, in the absence of the declaration was not maintainable and prays for dismissal of the appeal.

4. I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit in the appeal, for, in case, the appellants-plaintiffs were aggrieved of the action of HUDA, in seeking the amendment of the sectoral plan, nothing prevented them to seek declaration by paying the Court fees. Once, declaration has not been sought, the suit simpliciter for permanent injunction was not maintainable. At the best, in case, the appellants-plaintiffs had some grievance, viz-a-viz, loss of business which is yet to be determined as SCOs allotted to the private respondents had not been erected, damages can be claimed by leading the direct and cogent reasons, but not in the manner and mode as has been adopted.

5. Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the judgment and decree of both the Courts below which is based upon the appreciation of oral and documentary evidences, much less, no substantial question of law arises for determination.

6. With the aforesaid observations, the appeal is dismissed.