
(2011) 02 P&H CK 0242

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 742 of 2011 (O and M)

Santosh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Citation : (2011) 02 P&H CK 0242

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.

CM No. 2191.C of 2011

1. The application is allowed and certified copy of judgment of the lower appellate court is taken on record subject to all just exceptions.

RSA No. 742 of 2011

2. Plaintiff Santosh having lost in both the courts below has filed the instant second appeal.

3. Appellant-Plaintiff filed suit against Defendant-Respondent Union of India alleging that she is carrying on business of selling readymade garments since long at Rehri Market near Booth No. 24, Sector 19, Sadar Bazar, Chandigarh. Defendant issued hand-cart licence No. 810 registration No. 1066 and allowed the Plaintiff to carry on her business. However, there was a fire in the Rehri Market in April, 1993. All goods of the Plaintiff were burnt in the said fire. Defendant's officials surveyed the area on 11.4.1993. Plaintiff's name was mentioned in the survey report. The Defendant assured the Plaintiff and other occupants of the Rehri Market that they would be suitably rehabilitated by allotment of pucca booths. The Defendant allotted pucca booths in Sectors 19 and 27 to other persons of the Rehri Market but the Plaintiff has not been

allotted any such pucca booth. The Plaintiff also deposited Rs. 3000/-with the Defendant for allotment of pucca booth. However, the booth has not yet been allotted to the Plaintiff. Accordingly, the Plaintiff sought permanent injunction restraining the Defendant from illegally and forcibly removing and dispossessing the Plaintiff from the disputed site in Rehri market near Booth No. 24 Sector 19, Sadar Bazar, Chandigarh, except in due course of law.

4. Defendant admitted that the Plaintiff was granted hand-cart licence No. 810 registration No. 1066. However, Defendant denied if the Plaintiff was carrying on business at the disputed site. She was not carrying on any business at the site although she got the licence issued. She also did not submit any application for allotment of booth. Defendant had notified scheme for allotment/transfer of pucca booths and rehabilitated all the eligible persons of Sector-19, Rehri Market by allotment of alternative sites in the year 1993. The Plaintiff has woken up after about nine years being not genuine claimant. If the Plaintiff had been the fire victim, she would have immediately approached the court. The Plaintiff has encroached upon the government land illegally. Various other pleas were also raised.

5. Learned Civil Judge (Junior Division), Chandigarh vide judgment and decree dated 12.5.2010 dismissed the Plaintiff's suit. First appeal preferred by the Plaintiff has been dismissed by learned Additional District Judge, Chandigarh vide judgment and decree dated 29.1.2011. Feeling aggrieved, the Plaintiff has preferred the instant second appeal.

6. I have heard learned Counsel for the Appellant and perused the case file.

7. Learned Counsel for the Appellant vehemently contended that the Plaintiff was issued licence Annexure A/2 to carry on business at the disputed site and was also issued provisional identity card which is part of Annexure A/2. It was also contended that the Defendant vide letter Annexure A/1 (Ex. PW4/3) required the Plaintiff to deposit Rs. 3000/-with the Housing Board as earnest money against constructions of booth in Rehri Market and the Plaintiff accordingly deposited the said amount which has not even been refunded to the Plaintiff. It was also pleaded that the Plaintiff along with instant suit also filed another separate suit around the same time seeking allotment of pucca booth to the Plaintiff and the said suit is still pending.

8. I have carefully considered the aforesaid contentions. Pucca booths to eligible persons of Rehri Market were allotted in the year 1993 but the Plaintiff filed the instant suit on 16.10.2001 and the other suit allegedly filed for allotment of pucca booth was also filed in the year 2001 i.e. after long 8 years. There is no explanation why Plaintiff remained silent during this period of 8 years. The eligible persons of Rehri Market have been accommodated in booths. The Plaintiff has, therefore, no right to carry on business at the disputed site. However, I am not expressing any opinion regarding eligibility of the Plaintiff to allotment of pucca booth as allegedly sought by her in the other pending suit. Consequently,

unreported judgment dated 19.9.2006 in, titled Smt. Neelam Rani v. Union of India and another RSA No. 4656 of 2000, relied on by learned Counsel for the Appellant as affirmed by Hon''ble Supreme Court in SLP (Civil) No. 10344 of 2008 vide order dated 3.5.2010 is of no help to the Plaintiff-Appellant in this case although the same may be relevant for the other pending suit for allotment of booth.

9. The Plaintiff alleged that her name figured in the survey list of fire victims. However, no such survey list has been placed on record by the Plaintiff in her evidence. Plaintiff's witness Daulat Ram also did not turn up for cross-examination so his statement cannot be read. Licence Annexure A/2 issued in favour of the Plaintiff on 15.6.1990 was valid upto 30.9.1990. Provisional identity card was issued on 31.1.1991. However, there is no evidence on record that the Plaintiff obtained any other licence thereafter or got the earlier licence renewed. Deposit of Rs. 3000/-for allotment of pucca booth is also not relevant in the instant suit as allotment of booth has not been sought in this suit. The said deposit may be relevant in the other suit in which prayer for allotment of booth has been made. All the documents produced by the Plaintiff relate to the year 1990-91 depicting that she might be carrying on business at the disputed site in the year 1990-91 but there is no document on record to depict that even thereafter she continued to carry on business at the disputed site till filing of the suit. The Plaintiff has not produced any licence authorising her to carry on business in the disputed site after the year 1991.

10. For the reasons aforesaid, I find no merit in the instant second appeal. Concurrent finding recorded by both the courts below against the Plaintiff-Appellant is justified by evidence on record and is supported by cogent reasons. The said finding does not warrant interference in second appeal as it cannot be said to be perverse or illegal nor the said finding is based on misreading or misappreciation of evidence. No question of law much less substantial question of law arises for determination in the instant second appeal. The appeal is accordingly dismissed in limine.

11. However, it is made clear that nothing observed hereinbefore shall have any bearing on the other suit said to have been filed by the Plaintiff for allotment of booth, which is said to be still pending.