
(2009) 04 P&H CK 0300
In the Punjab And Haryana At Chandigarh

Subhash Mangla	Vs	APPELLANT
Municipal Committee		RESPONDENT

Date of Decision : 23-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2009) 04 P&H CK 0300

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Judgement

Vinod K. Sharma, J.

C.M. No. 4739-C of 2009

Allowed as prayed for.

R.S.A. No. 1128 of 2003

1. This regular second appeal is directed against the judgment and decree dated 20.11.2002, passed by the learned Courts below, dismissing the suit filed by the plaintiff/appellant, claiming that he was owner in possession of the shop marked by letters ABCD shown in red colour in the site plan attached with the plaint.

2. It was pleaded by the plaintiff/appellant, that the land in dispute is part of ancestral property of the plaintiff, and he has been in possession of the same for the last 15 years, where he has been running the business, in the name and style of M/s Ashoka Pustak Bhandar, Sadar Bazar, Gurgaon. He has the requisite licence as well as electric connection to run the business. It was further the case of the plaintiff/appellant that the property was nazool land and the frontage of the other properties was also nazool land. The municipal committee sold the land in front to the owners of these properties. It was further pleaded, that the suit property was also sold by the municipal committee to the mother of the plaintiff @ 4.50 per sq. yard plus 10% surcharge, the total sale consideration and surcharge come to Rs. 123.75. The mother of the plaintiff deposited the same in

the State Bank of India on 1.4.1959. It was claimed that she had become owner of the property in dispute. The consequential relief of injunction was sought.

3. The suit was contested, wherein it was pleaded that the plaintiff had no locus standi to maintain the present suit, as he had no right over the suit property. It was denied that the plaintiff/appellant was in possession for the last 15 years.

4. The learned trial Court on appreciation of evidence dismissed the suit filed by the plaintiff/appellant.

5. Appeal also met with the same fate. In appeal, the plaintiff/appellant moved an application under Order 41 Rule 27 CPC for leading additional evidence. However, the learned lower appellate Court without deciding the application, dismissed the appeal.

6. The learned Counsel for the appellant raised the following substantial question of law:

Whether the learned lower appellate Court could decide the appeal finally without deciding the application filed by the appellant under Order 41 Rule 27 CPC?

7. In view of the law laid down by the Hon'ble Supreme Court in *Jatinder Singh and Anr. v. Mehar Singh and Ors.* 2009(1) RCR (C) 253, the substantial question of law deserves to be answered in favour of the plaintiff/appellant. Consequently, the judgment and decree passed by the learned lower appellate Court is liable to be set aside.

8. However, this case is not being remanded back to the learned lower appellate Court, for deciding the appeal after deciding the application under Order 41 Rule 27 CPC because the counsel for the parties agree that the property in dispute can be sold to the plaintiff/appellant on payment of current market price, which is to be determined by the Financial Commissioner and Principal Secretary, Urban Local Bodies, Haryana, Chandigarh.

9. It may be noticed, that while issuing notice of motion, the appellant was directed to deposit a sum of Rs. 1,05,000/- with the Registry of this Court towards sale consideration, which stands deposited on 7.8.2003.

10. The respondent-Municipal Corporation, Gurgaon, is permitted to withdraw that amount from this Court towards sale consideration, to be paid by the plaintiff/appellant, as per assessment to be made by the Financial Commissioner and Principal Secretary, Urban Local Bodies, Haryana, Chandigarh.

11. In view of agreed stand, the appeal is disposed of with a direction to the Financial Commissioner and Principal Secretary, Urban Local Bodies, Haryana, Chandigarh, to determine the market price payable by the plaintiff/appellant for 8.3. sq. yards of land in possession of the plaintiff/appellant.

12. The assessment of the market price be made after giving an opportunity of hearing to the plaintiff/appellant.

13. The plaintiff is directed to make payment as assessed by the Financial Commissioner and Principal Secretary, Urban Local Bodies, Haryana, Chandigarh, within one month from the date of assessment, after adjusting amount of Rs. 1,05,000/- already paid.

14. In case, the amount assessed is less than Rs. 1,05,000/-, the plaintiff/appellant would be entitled to refund of excess amount, which the Municipal Committee/Corporation, Gurgaon, shall pay back within one month of the date of assessment.

15. Appeal disposed of.