



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2668-1997

Municipal Committee, Gurgaon

. . . . Appellant

Vs.

Smt. Kasturi Devi

. . . . Respondent

Reserved on: 24.02.2026

Pronounced on: 27.02.2026

Pronounced fully/operative part: Fully

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Anil Chawla, Advocate
for the appellant.

Mr. Abhinav Sood, Advocate and
Mr. Nitesh Jhanjhria, Advocate
for the respondent.

DEEPAK GUPTA, J.

The present Regular Second Appeal has been filed by the defendant–Municipal Committee, Gurugram assailing the concurrent findings recorded by both the Courts below, whereby the suit instituted by the plaintiff Smt. Kasturi Devi seeking decree of perpetual injunction in respect of the property in dispute was decreed by the learned trial Court vide judgment & decree dated 15.04.1991, and the appeal preferred by the defendant was dismissed by the learned First Appellate Court vide judgment & decree dated 27.09.1996.

2. For the sake of convenience and to avoid any confusion, the parties shall be referred to as per their status before the learned trial Court. The record of the trial Court available on DMS has been carefully perused.

3. **Subject Matter of Suit** : The controversy relates to a plot measuring 812 square yards, forming part of Khasra No. 252/2 (3169/252 min) situated



within the municipal limits known as 6-C, Shivaji Nagar, Gurugram (hereinafter referred to as the suit property), which has been depicted by letters ABCD in red colour in the site plan appended with the plaint.

4.1 ***Plaintiff's Case*** : As per the case of the plaintiff, she is the owner in possession of the suit property by virtue of a family settlement, whereby the said plot was transferred to her by her husband Shri Ram Chander. It was pleaded that Shri Ram Chander had earlier affirmed the plaintiff's rights in Civil Suit No. 237 of 13.3.84, decided on 30.03.1984. Shri Ram Chander himself had become co-owner of the larger property through a sale deed dated 16.07.1963, and in a mutual arrangement amongst co-sharers, the share comprising Khasra No. 252/2 had fallen to his share.

4.2 It was further pleaded that the plaintiff intended to raise construction over the suit property and accordingly submitted an application dated 01.05.1984 to the defendant-Committee seeking sanction of the site plan along with the requisite fee and plan. As no order was passed by the defendant within a period of two months, the plaintiff claimed that in terms of Section 205(2) of the Haryana Municipal Act, the building plan stood deemed to have been sanctioned. According to the plaintiff, in order to cover up its omission, the defendant thereafter passed various proceedings and ultimately rejected the application for construction vide order dated 26.03.1985. Aggrieved thereof, the plaintiff preferred an appeal before the Deputy Commissioner, Gurugram, who remanded the matter with directions to decide the same after proper measurement of the plot. Measurement of the suit plot along with the adjoining plot of Bal Kishan was thereafter carried out.

4.3 The plaintiff also relied upon an earlier decision of the Deputy Commissioner dated 31.05.1982 as well as the report of the Town and Country Planning Officer, which allegedly supported the plaintiff's claim. It was further alleged that despite these developments, the defendant intended to encroach



upon the suit property by fencing it with barbed wires and by installing sign-boards treating it as municipal land.

4.4 With the above averments, the plaintiff sought a decree declaring her ownership and possession over the suit property along with a decree of permanent injunction restraining the defendant from interfering with her possession or obstructing construction in accordance with the submitted site plan.

5.1 **Defendant's Stand** : The defendant-Municipal Committee contested the suit by filing a written statement raising preliminary objections regarding non-joinder of necessary parties, absence of notice under Section 80 CPC, and maintainability of the suit etc.

5.2 On merits, it was asserted that the suit property vested in the Municipal Committee and that the suit was barred by the principle of res judicata under Section 11 CPC. The defendant further pleaded that the plot formed part of an open space reserved under Town Planning Scheme No. 6-C, and that all open spaces, roads and public utilities under the scheme stood vested in the Municipal Committee. The decree relied upon by the plaintiff was alleged to be fictitious. While admitting that the plaintiff had applied for sanction of construction and deposited the requisite fee, it was asserted that no valid building plan had been submitted.

5.3 The defendant also disputed the proceedings before the Deputy Commissioner and pleaded that in an earlier litigation titled "*Tara Wanti vs. Municipal Committee, Gurugram*", involving the plaintiff's husband Ram Chander, demarcation was conducted pursuant to orders of the District Judge, Gurugram, wherein the suit property had been declared to be an open space. It was further pleaded that the appeal and objections filed by Ram Chander were dismissed by the District Judge on 28.05.1976, and therefore the plaintiff, being his successor, was bound by the said adjudication. Prayer was accordingly made for dismissal of the suit.



6. In the replication, the plaintiff controverted the stand of the defendant and pleaded that no valid Town Planning Scheme No. 6-C ever existed. Alternatively, it was pleaded that even if such a scheme had been framed, the same was never implemented, as essential internal development works such as roads, sewerage and other civic amenities were not completed within the statutory period of five years, rendering the scheme unenforceable and ineffective.

7. Upon completion of pleadings, the learned trial Court framed the necessary issues. Parties led both oral as well as documentary evidence in support of their respective claims.

8. **Findings of the Trial Court :** After appreciating the evidence on record, the learned trial Court returned a finding that the plaintiff had successfully established her ownership over the suit property. However, the trial Court simultaneously observed that the plot in question formed part of the Town Planning Scheme and was shown as an open space/park therein, and therefore, vested in the Municipal Committee. The suit was nevertheless held to be maintainable and the plaintiff was found to have locus standi to institute the proceedings. The trial Court further held that the judgment in the earlier litigation titled '*Tara Wanti vs. Municipal Committee, Gurugram*' did not operate as res judicata against the plaintiff. Significantly, the trial Court recorded a categorical finding that the Town Planning Scheme had not been implemented by the Municipal Committee within the prescribed statutory period and had consequently lapsed. In view of the cumulative effect of these findings, the suit of the plaintiff was decreed vide judgment & decree dated 15.04.1991.

9. **Findings of the Appellate Court :** Aggrieved thereof, the defendant–Municipal Committee preferred an appeal, whereas the plaintiff filed cross-objections challenging certain adverse findings recorded by the trial Court.

10. Before the learned First Appellate Court, the plaintiff primarily assailed the finding of the trial Court holding that the suit property formed part of the Town Planning Scheme and also challenged the legality of the order dated



26.03.1985, whereby the Municipal Committee had refused sanction for raising construction over the suit property.

11.1 Upon re-appreciation of the entire evidence, the learned First Appellate Court affirmed the finding that the plaintiff was owner in possession of the suit property, placing reliance upon the judgment & decree dated 30.03.1984 (Ex.P16 and Ex.P17). The Appellate Court observed that the defendant had failed to specifically rebut the plaintiff's plea of ownership and possession. No suggestion disputing the plaintiff's title or possession was put either to PW-8 Ram Chander, the attorney of the plaintiff, or to any other witness. Even DW-1, examined by the defendant, did not depose anything to dispute the plaintiff's title or possession. The Appellate Court relied upon the sale deed (Ex.PW8/1), jamabandi (Ex.P15), mutation (Ex.P19), the decree & judgment (Ex.P16 and Ex.P17), as well as testimonies of PW-5 (Patwari) and PW-8 (Ram Chander), to uphold the plaintiff's ownership and possession.

11.2 The finding of the trial Court that the suit property formed part of the Town Planning Scheme was, however, reversed. The Appellate Court held that the defendant failed to establish the exact location of the suit property so as to demonstrate that it fell within the Town Planning Scheme. It was further observed that even if the property was assumed to be situated within the scheme area, there was no cogent evidence to show that it had been reserved for a park or street. Additionally, the scheme itself was found to have lapsed due to non-implementation within the statutory period.

11.3 While examining documents Ex.D1, Ex.D2, Ex.D3 and Ex.D7 relied upon by the defendant, the Appellate Court concluded that these documents neither established the boundaries of Khasra No. 252/2 nor proved that the adjoining roads or alleged park formed part of the said khasra. On the contrary, reliance was placed upon letter dated 16.11.1984 (Ex.P3) issued by the Administrator, Municipal Committee, Gurugram seeking clarification from the Depart-



ment of Town and Country Planning, and the reply dated 22.11.1984 (Ex.P4), which clarified that the suit property did not fall within any reserved area.

11.4 The Appellate Court also relied upon the report of the Local Commissioner (DRO, Gurugram) dated 25.06.1985 (Ex.PW4/1), prepared in the presence of municipal and revenue officials, which recorded that the site plan prepared for the Town Planning Scheme was defective, as it indicated scale without measurements. Reference was also made to a similar dispute concerning the adjoining plot of Balkishan, wherein the Local Commissioner's report (Ex.PW6/1 to Ex.PW6/4) had concluded that Balkishan's plot did not fall within the area reserved for street. The said report had been accepted by the Deputy Commissioner vide order dated 31.05.1982 (Ex.P10) and had attained finality.

11.5 Further reliance was placed upon the report of the Administrator, Municipal Committee dated 23.05.1985 (Ex.P11), recording that several constructions had been raised in the area without sanction and even in open spaces. The Appellate Court observed that since the plaintiff's plot adjoined Bal Kishan's plot, which had already been found not to fall within any reserved area, a different yardstick could not be adopted in the plaintiff's case.

11.6 The Appellate Court also held that the suit property did not vest in the Municipal Committee and affirmed the finding of the trial Court that the suit was not barred by res judicata. It was noticed that in the earlier litigation titled '*Tara Wanti vs. Municipal Committee*', Ram Chander (plaintiff's husband) had merely been a proforma respondent and no relief had been claimed against him. The compromise in that case was effected only between Tara Wanti and the Municipal Committee; and Ram Chander was neither a signatory nor had his rights been adjudicated. Consequently, dismissal of his appeal as infructuous could not operate as res judicata.

11.7 The Appellate Court further held the order dated 26.03.1985 rejecting sanction to be illegal. It also affirmed the finding that the Town Planning Scheme had not been implemented within five years and had therefore lapsed,



relying upon Section 203(6) of the Haryana Municipal Act, 1973. In this regard, the Appellate Court noticed the testimony of PW-8 that no development facilities had been provided even up to 1981-82 though the scheme dated back to 1967. The defendant failed to effectively cross-examine the witness on this aspect. PW-10, Surinder Singh Rao, Executive Officer of the Municipal Committee, expressed inability to state, whether facilities had been provided within five years, while DW-1, Gopal Singh, Junior Engineer, also failed to confirm implementation of the scheme.

11.8 On the cumulative appreciation of the material on record, the learned First Appellate Court dismissed the appeal of the defendant and allowed the cross-objections of the plaintiff, thereby affirming the decree in favour of the plaintiff.

12. ***Submissions & Consideration by this Court*** : Assailing the concurrent findings recorded by the Courts below, learned counsel appearing on behalf of the appellant–Municipal Committee contends that both the Courts below committed a patent error in holding that the suit property did not form part of the Town Planning Scheme. It is further contended that Ram Chander, husband of the plaintiff, was a party to the earlier litigation titled '*Tara Wanti vs. Municipal Committee*' and that the appeal preferred by him therein having been dismissed, the present suit was barred by the principle of *res judicata*. On these premises, prayer has been made for setting aside the judgments and decrees passed by the Courts below and for dismissal of the plaintiff's suit.

13. *Per contra*, learned counsel for the respondent submits that the impugned judgments are based upon a proper appreciation of oral and documentary evidence and record concurrent findings of fact, which do not call for any interference in exercise of jurisdiction under Section 100 CPC.

14. This Court has heard learned counsel for the parties and carefully perused the record.



15. At the outset, it deserves to be noticed that the finding of the Courts below that the plaintiff is owner in possession of the suit property is a concurrent finding of fact, based upon documentary evidence including sale deed, revenue record, mutation entries and the earlier decree in favour of the plaintiff. The said finding has not been seriously disputed before this Court. Even otherwise, no perversity or misreading of evidence has been demonstrated so as to warrant interference in second appeal.

16. The controversy raised by the appellant essentially revolves around two aspects:

- Whether the suit property formed part of the Town Planning Scheme and vested in the Municipal Committee; and
- Whether the present suit was barred by the principle of res judicata in view of the earlier litigation involving Ram Chander.

17. Both these issues were elaborately considered by the learned First Appellate Court, which being the final Court on facts, re-appreciated the entire evidence and returned well-reasoned findings.

18. ***Re: Town Planning Scheme and Vesting*** : The burden to establish that the suit property formed part of the Town Planning Scheme and stood reserved for a public purpose was squarely upon the defendant–Municipal Committee. The Appellate Court rightly noticed that the documents relied upon by the defendant, namely the notification of sanction, ownership statement and an incomplete site plan, failed to clearly demarcate the boundaries of Khasra No. 252/2 or to demonstrate that the suit property specifically fell within an area reserved for a park or street.

19. On the other hand, the plaintiff produced cogent evidence including clarification obtained from the District Town Planner indicating that the suit property did not fall within any reserved area; the report of the Local Commissioner highlighting defects in the Town Planning site plan and inability to demar-



cate the plot with reference to the scheme; and documentary evidence arising from a similar dispute concerning the adjoining plot of Bal Kishan, which had attained finality and indicated non-adherence to the scheme.

20. The Appellate Court also took note of evidence demonstrating widespread deviations from the Town Planning Scheme and existence of constructions over areas allegedly reserved for public utilities. In such circumstances, the failure of the Municipal Committee to establish precise demarcation of the suit property within the scheme was rightly held to be fatal to its plea of vesting.

21. Additionally, both the Courts below recorded a categorical finding that the Town Planning Scheme had not been implemented within the statutory period and had therefore lapsed. The said finding is based on oral testimony of municipal officials themselves, who expressed inability to prove implementation of development works within the prescribed period. Such a finding is purely factual and cannot be re-opened in second appeal in the absence of any perversity.

22. It is well settled that mere sanction of a planning scheme does not automatically divest private ownership unless the property is clearly reserved and the scheme is duly implemented in accordance with law. The Municipal Committee having failed to discharge this burden, the plea of vesting was rightly rejected.

23. **Re: Plea of Res Judicata** : The Appellate Court has also rightly repelled the plea of res judicata. A perusal of the earlier litigation reveals that Ram Chander was only a proforma defendant, against whom no substantive relief had been claimed. The compromise in the said proceedings was effected exclusively between Tara Wanti and the Municipal Committee, and Ram Chander was neither a signatory to the compromise nor were his rights adjudicated therein. The dismissal of his appeal occurred only because the main suit itself was withdrawn, rendering the appeal as infructuous.



24. For an application of res judicata, it is essential that the issue must have been directly and substantially in issue between the same parties and must have been finally adjudicated. These ingredients are conspicuously absent in the present case. Consequently, the earlier proceedings could not operate as res judicata against the plaintiff, who claims independent rights through Ram Chander.

25. **Scope of Interference in Second Appeal :** It is trite that the jurisdiction of this Court under Section 100 CPC is confined to substantial questions of law. Concurrent findings of fact, based upon appreciation of evidence, cannot be interfered with unless shown to be perverse, based on no evidence, or resulting from misapplication of law.

26. The appellant has failed to demonstrate any such perversity or substantial question of law arising from the impugned judgments. The findings recorded by the Courts below are well reasoned, supported by evidence, and do not suffer from any legal infirmity.

27. **Conclusion :** In view of the foregoing discussion, this Court finds no merit in the present appeal. The concurrent findings recorded by the Courts below do not call for interference. Accordingly, the Regular Second Appeal stands dismissed, leaving the parties to bear their own costs.

(DEEPAK GUPTA)
JUDGE

27.02.2026

Neetika Tuteja

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No

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