IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2437-1995 (O&M)
Reserved on :- 23.04.2026
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The Hisar House Building Co-operative Society Limited

… Appellant

Versus

Municipal Committee, Hisar

... Respondent

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CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Ashwani Kmar Chopra, Senior Advocate with
Mr. Brahmjot Singh Nahar, Advocate
for the appellant.

Mr. Jagdish Manchanda, Senior Advocate, with
Mr. Saksham Kaushik, Advocate;
Mr. Devyanshu Arora, Advocate
for the respondent.

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VIRINDER AGGARWAL, J.

1. The present Regular Second Appeal (for short "RSA") is preferred by the appellants/plaintiffs assailing the judgment and decree dated 14.08.1995 passed by the learned Additional District Judge, Hisar, whereby the well-reasoned judgment and decree dated 12.02.1992 of the learned Sub-Judge Ist Class, Hisar were reversed. It is contended that the impugned judgment is vitiated by patent perversity, misapplication of law, and a manifestly erroneous appreciation of the evidence on record, resulting in grave miscarriage of justice. The appellants, therefore, seek

setting aside of the impugned judgment and decree and restoration of the decree rendered by the learned Trial Court.

2. Succinct Factual Matrix of the case are that the plaintiff is a society duly registered under the Act No. 2 of 1912, acting through its President, Shiv Kumar Nagpal, who is duly authorised to institute the present proceedings. The plaintiff asserts that it purchased land measuring 50 Bighas and 2 Biswas situated at Hisar vide a registered sale deed dated 14.07.1959, comprising Khasra Nos. 5017, 5018, 5019, 5021, 5022, 5028 and 5029, forming part of Khewat No. 1274 and Khatauni No. 3058, as reflected in the Jamabandi for the year 1945–46. Subsequent to its acquisition, the plaintiff developed the land by carving out a residential layout after obtaining due sanction, resulting in the creation of 121 plots, while reserving certain portions for roads, streets, and parks. By virtue of Resolution No. 1076 dated 31.12.1964, the areas depicted in yellow in the site plan were earmarked for public amenities, whereas the land shown in green was sold to members of the society. The remaining land, delineated in red, is stated to be vacant and under the ownership and possession of the plaintiff.

2.1. The plaintiff intended to further alienate this residual land to its members; however, the defendant allegedly obstructed such attempts and initiated complaints before the police authorities. It is averred that the police, upon inquiry, found the land to belong to the plaintiff. Despite this, the officials of the defendant, on 30.07.1983, unlawfully encroached upon the suit land by fencing it with barbed wire and have since sought to assert unauthorized control thereover. Repeated requests by the plaintiff for

removal of such encroachment having failed, the present suit came to be instituted.

3. The defendant contested the suit by raising several preliminary objections, *inter alia,* that the suit is false, not maintainable in its present form, barred by limitation, and suffers from non-joinder of necessary parties, including the State of Haryana, local residents, and plot holders of the society. It was further pleaded that the suit is barred for want of statutory notice under Section 52 of the Haryana Municipal Act, and is also liable to fail on grounds of estoppel and improper valuation. On merits, the defendant denied the status of the plaintiff as a registered society as well as the authority of its President to institute the suit. It was further contended that upon development of the colony, all open spaces, roads, streets, and parks vested in the Municipal Committee, and that the land in dispute forms part of a site reserved for a park, thereby vesting in the defendant. While admitting the act of fencing the land with barbed wire, the defendant justified the same on the ground that it was entitled to develop the land into a public park. All other allegations were categorically denied, and dismissal of the suit was prayed for.

4. The plaintiff filed a replication traversing the assertions made in the written statement and reiterating the averments contained in the plaint. Upon consideration of the pleadings, the learned Trial Court framed the requisite issues for adjudication, which are as under:-

1. Whether the plaintiff is registered society and suit has been filed through duly authorised person?OPP.
2. Whether the plaintiff is owner in possession of the suit land?OPP.
3. Whether the defendant is entitled to special costs?OPD.

4. Whether the suit is not maintainable in the present form? OPD

5. Whether the suit is bad for non-joinder of partners?OPD.

6. Whether the suit is bad for want of notice under section 52 of the Haryana Municipal Act and under section 80 CPC?OPD.

7. Whether the suit has been properly valued for the purposes of court fee and jurisdiction?OPD

8. Whether the suit is time barred?OPD.

9. Whether the plaintiff is estopped from filing the suit? OPD.

10. Relief.

5. Both parties were afforded adequate and efficacious opportunity to adduce evidence in substantiation of their respective pleadings. Upon culmination of the trial and after hearing learned counsel for the parties, the learned Trial Court proceeded to decree the suit with the following observations:-

> "*Upon an appreciation of the evidence and material on record, the learned Trial Court decreed the suit, holding that the plaintiff had successfully established its case. The defendant was permanently restrained from interfering with the plaintiff's possession over the vacant land measuring 700 square yards, as described in the plaint. Additionally, a decree of mandatory injunction was granted directing the defendant to restore possession by removing the barbed wire within one month. The suit was accordingly decreed with costs.*"

6. Aggrieved by the aforesaid judgment and decree, the respondents/appellants preferred an appeal before the learned First Appellate Court, which, upon a comprehensive reappraisal of the entire record, allowed the appeal by observing that "*the learned First Appellate Court, upon reappraisal of the record, found the conclusions of the Trial Court unsustainable, particularly with respect to Issue No. 2 concerning*

ownership and possession. It was held that the plaintiff had failed to establish its title and possession over the suit property. Consequently, the findings of the Trial Court were reversed, the appeal was allowed with costs, and the suit of the plaintiff was dismissed.

6.1. Aggrieved by and impugning the findings and conclusions recorded by the learned First Appellate Court, the appellant/plaintiff has preferred the present appeal. Upon its admission, notice was duly issued, in pursuance whereof the respondents entered appearance through counsel and contested the proceedings. The records of the Courts below have since been requisitioned and are available on the DMS for comprehensive examination and adjudication.

7. I have heard learned counsel for the parties at considerable length and have accorded thoughtful and judicious consideration to their respective submissions, in light of the pleadings on record, the evidence adduced by the parties, and the findings returned by the Courts below.

8. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317 and Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying

upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

9. Learned counsel for the appellant vehemently contended that the findings recorded by the learned Additional District Judge, Hisar are vitiated by conjectures and surmises and have resulted in the unwarranted reversal of a well-reasoned judgment and decree rendered by the learned Sub-Judge First Class, Hisar. It was urged that the learned First Appellate Court has erroneously upset the findings on Issue No. 2 by holding that the plaintiff–appellant failed to establish its ownership over the suit property and, consequently, was disentitled to relief. It was further contended that the learned First Appellate Court failed to appreciate the categorical admissions made by the respondent–defendant in paragraphs 5 and 6 of the written statement regarding the ownership of the appellant–plaintiff.

9.1. Counsel further submitted that the burden of proving vesting of the suit land in the respondent–defendant, on the strength of the resolution dated 31.12.1964, squarely lay upon the respondent–defendant, which burden has remained undischarged. It was also argued that the learned First Appellate Court failed to consider that other portions of the vacant land, depicted in green in the site plan, had already been allotted by the plaintiff society to its members, thereby negating the contention that such land vested in the Municipal Committee. The finding regarding non-production of the layout plan was also assailed as being factually and legally untenable.

9.2. It was additionally contended that, since the ownership of the suit property was not seriously disputed and the respondent–defendant

itself traced its claim through the plaintiff, the omission to formally exhibit the sale deed, despite its production on record, ought not to have been construed adversely. In this backdrop, it was submitted that, in view of the adverse finding returned by the learned First Appellate Court, the appellant–plaintiff now seeks to adduce additional evidence by way of the sale deed and copies of the jamabandis for the years 1974–75 and 2018–19, in order to conclusively establish its title over the suit land.

10. Per contra, learned counsel for the respondent submitted that the impugned judgment of the learned First Appellate Court is legally sound and does not suffer from any illegality or infirmity. It was contended that the learned First Appellate Court has rightly held that the appellant–plaintiff failed to prove its ownership over the suit property and, therefore, is not entitled to any relief. Reliance was placed upon the settled legal position that vacant and open spaces in a developed colony vest in the Municipal Committee, as elucidated in ***Jesico Agro Engineering Pvt. Ltd. and Another vs. Municipal Committee, Jagadhri, 2014: PHHC:000715***.

10. It was further contended that the application for leading additional evidence is wholly misconceived and not maintainable, having been filed after an inordinate delay of nearly three decades, thereby attracting the doctrine of delay and laches. Learned counsel submitted that the respondent–defendant had, from the inception, taken a specific stand in the written statement that the open spaces vest in the Municipal Committee and are being utilized as a public park. The documents now sought to be produced were admittedly within the knowledge and possession of the appellant–plaintiff at the time of institution of the suit.

10.1. It was thus argued that the conditions stipulated under Order XLI Rule 27 of the of the Code of Civil Procedure, 1908 ('CPC' for short) are not satisfied, as additional evidence can only be permitted where the trial court has refused to admit evidence which ought to have been admitted, or where, despite due diligence, such evidence was not within the knowledge of the party or could not be produced earlier. In the present case, although the documents were placed on record, they were not duly proved or exhibited, and such omission cannot be permitted to be cured at this belated stage.

10.2. The learned Trial Court has recorded its findings on Issue No. 2 in paragraphs 12 to 15 of the impugned judgment, which read as under:-

> 12. As per the case of the plaintiff, the land in dispute has been shown in colour red in the site plan Mark-A. The roads and parks have been shown in yellow colour. The land shown in green colour is the vacant land which has been allotted to the members of the society as per the case of the plaintiff. It is admitted by the plaintiff itself that vide resolution No.1076 dt. 31.12.64 Municipal Committee has declared the roads, parks and streets as public streets. Plaintiff has asked the defendant through PW5 Rakesh Kumar Clerk Municipal Committee to produce this very resolution. This resolution was not produced by Rakesh Kumar PW5 stating that he could not lay his hands on his resolution in spite of his best efforts. By the production of this resolution it could be known as to what is owned and possessed by the Municipal Committe. From Ex. P5, it is evident that lay out plan Ex. P4 was revised. Revised lay out plan was sent to Municipal Committee. Even Municipal Committee did not produce this lay out plan. PW3 Arjan Dass

Bhutani Building Clerk M.C. and PW5 Rakesh Kumar Clek Muncipal Committee have categorically stated that in spite of their best efforts to find out lay out plan, same could not be traced. Even PW3 has undertaken to produce a certificate from the competent authority of the Municipal Committee to the effect that the lay out plan has been mis-pl ced by the Municipal Committee but later on he did not do so. All this conduct of the witnesses of Municipal Committee produced by the plaintiff show that the Municipal Committee is hiding the production of the lay out or the relevant resolution mentioned above. Municipal Committee has also not chosen to lead evidence for the reasons best known to it. In fact, Municipal Committee has kept back the lay out plan as well the resolution vide which roads and parks have been declared as public streets. Plaintiff did not contest the ownership of Municipal Committee on the roads and parks, But merely because some other land which was earlies allotted to the plaintiff society was left vacant would not mean that it also vests in the Municipal Committee. Unless, there is some specific agreement between the Municipal Committee and the plaintiff society that the ownership of vacant land, after carving out plat was given to the Municipal Committee, it cannot be said that the Municipal Committee has become owner of the vacant land. In this case, there is not even an iota of evidence available on record to show that the vacant land in front of plot No.79 vests in Municipal Committee, the entire land was allotted to plaintiff society. The maintenance of foads and parks is usually done by Municipal Committee and as such since the development work is to be done by the Municipal Committee, generally the society hands over the site of roads and parks to the Municipal Committee. Rightly so, in this case as well the plaintiff

did not contest the ownership of roads and parls as that of Municipal Committee.

13. It was contended by learned counsel for the plaintiff that the other vacant land shown in colour green in the site plan has also been sold to the members of the society. In order to prove the same, plaintiff society has examined PW1 and PW2. They have categorically stated that the vacant land has been allotted to them. Ex. P1 is the proposed site plan of the house of PW1. The total area of the plot of pW1 has been shown as 359.69 5q. Meter. As per PW3, the total area of the house of PW2 has been shown as 344.58 Sq. Meter. This area is definitely more than the area of the plot initially allotted to the PW1 and PW2 respectively. These site plans have been passed by the Municipal Committee. Thus from these documents, it is evident that the society has been allotting the vacant land to its members.

14. Apart from above, unless it is shown that the ownership of vacant land has been specifically given to the Municipal Committee. It does not become owner of that land merely for the reasons the land is vacant. Municipal Committee has no right on the land of plaintiff society. There is no provisio of law which authorises the Municipal Committee to become owner of any such vacant land.

15. It is admitted by the Municipal Committee itself in its pleadings that they are in possession of this very land. It is the allegation of the plaintiff that the Municipal Committee has forcibly fixed barbed wire around the land in dispute on 30.7.83. Since, the plaintiff society has got a legal right of ownership and possession respecting land in dispute, therefore, they are entitled to possess this very land. Merely because the defendant has fixed barbed wire around the land in question would not mean tha t it is possessed by

the Municipal Committee. Under these circumstances, the relief for mandatory injunction can be granted to the effect that defendant be directed to remove the barbed wire fixed on the land in question. On this count, the argument of learned counsel for the defendant that since the plaintiff has not filed a suit for possession, therefore, the suit is not maintainable; is not sustainable. By removing the fencing of barbed wire, the land can be restored to its original shape. Plaintiff society is held as owner in possession of land in dispute. Accordingly, this issue is decided in favour of plaintiff but against the defendant.

11. The learned First Appellate Court, upon a reappraisal of the evidence and material on record, has taken a view contrary to that of the learned Trial Court and has reversed its findings, as delineated in paragraphs 13 to 18 of the impugned judgment, which are reproduced hereunder:-

13. In paragraphs No.5 and 6 of the parawise reply in the written statement of the defendant, the defendant has pleaded that the disputed site is a park site and it vests in the municipal committee and is in its possession. According to learned counsel for the respondent, this plea is itself an admission of ownership of the plaintiff over the suit property. Before any finding can be given on this admission in favour of either of the parties, the plea of the defendant raised in paragraph No.2 of the parawise reply has to be taken into consideration. It is specifically denied in this paragraph that the suit property is a part of khasra numbers mentioned in this para of this plaint. In para No.2 of the plaint, the plaintiff has claimed that it purchased land measuring 50 bighas 2 biswas situated at Hisar comprised in khasra numbers 5017, 5018, 5019, 5021, 5022, 5028 and 5029. The claim of the plaintiff is that the

plots were carved out on this land and after carving out plots and leaving land for roads, streets and parks, the disputed site alongwith other sites was left vacant. It is denied by the defendant that the disputed site is a part of these khasra numbers. There is no question of their being admission of the plaintiff over the disputed site. Mere plea that the disputed site is a park site and it vests in the municipal committee would not convey in any manner that the defendant admits the ownership of the plaintiff over the disputed site.

14. Learned trial court has without any reason observed that the land in question is some land which was allotted to the plaintiff society and was left vacant after carving out colony. This observation of learned trial court contained in para No.12 of the judgment has no basis for it.

15. It is true that the defendant could not produce the layout plan of this colony yet there is no case of the plaintiff that any copy of that lay out plan was not kept by it. That lay out plan is not produced by the plaintiff nor any case is made out for its loss. The plaintiff could produce on record copy of the sale-deed vide which the land of the aforesaid khasra numbers was purchased by it and could get the disputed site demarcated for dinding out if it was a part of these khasra numbers. Nothing such was done by the plaintiff.

16. Thus, neither there is an admission on the part of the defendant admitting the plaintiff to be owner of the disputed site nor there is any evidence on the file to prove that the disputed site is a part of the aforesaid khasra numbers and as such the plaintiff is its owner.

17. When the plaintiff has utterly failed to prove its ownership over the suit property, no relief in respect of the said property could be granted in favour of the plaintiff.

18. In view of the aforesaid discussion, the record cannot sustain the finding of learned trial court on issue No.2. Holding that the plaintiff fails to prove itself the owner and in possession of the suit property, I reverse the finding of learned trial court on issue No.2. and consequently accept the appeal with costs. The suit of the plaintiff, therefore, stands dismissed with costs. Decree sheet be prepared and the file be consigned.

11.1. In paragraph No. 3 of the plaint, the plaintiff has, inter alia, pleaded as under:-

> "That after purchasing the land, the plaintiff socieity carved out plots after getting the layout plan sanctioned which was later on revised vide memo No.6446-PTP/H-19 dated 29.08.1960. According to this layout 121 plots were carved out. There was some open land left in the ownership of the plaintiff society after leaving the land for roads, streets and parks."

11.2. Paragraph No. 3 of the written statement, on merits, is couched in the following terms:-

> "After laying out the Colony all vacant space, roads, streets, park and also other things left common purpose, vests in the Municipality. It is totally wrong to say that any open land was left in the ownership of the plaintiff society plaintiff Society. Only the plots remains in the ownership of the proprietors. And all other spaces vests in the Municipal Committee."

12. A conjoint reading of paragraph No. 3 of the written statement unmistakably demonstrates that the defendant–Municipal Committee has, in unequivocal terms, acknowledged the ownership of the plaintiff–society over the land upon which the colony was developed. However, it has specifically disputed the continuance of ownership of the plaintiff over the

residual open spaces, asserting that while individual plots remained with the allottees, all other areas stood vested in the Municipal Committee. Consequently, the real controversy between the parties does not pertain to the plaintiff's title over the colony land per se, but is narrowly confined to the question of vesting and ownership of the open spaces.

12.1. It is, in fact, an admitted position between the parties that the plots carved out of the land were owned by the plaintiff–society and duly allotted to its members, and that the areas earmarked for roads, streets, and parks stand vested in the Municipal Committee. The dispute, therefore, survives only in respect of the remaining open spaces. In paragraph No. 4 of the plaint, the plaintiff has averred that, vide Resolution No. 1076 dated 31.12.1964, the Municipal Committee declared certain areas depicted in yellow in the site plan as roads, streets, and parks. The defendant–Municipal Committee, in its written statement, has admitted the contents of the said paragraph, albeit disputing the accuracy of the site plan. Thus, it stands established that, by virtue of the aforesaid resolution, only the specified areas of roads, streets, and parks were declared as public streets, with no reference whatsoever to any other open spaces.

12.1. Further, in paragraph No. 5 of the plaint, it is pleaded that the vacant land shown in green in the site plan was sold by the plaintiff–society to its members, which assertion was met by the defendant with a denial of the plaintiff's right to effect such sale, contending instead that the said land constituted park area and vested in the Municipal Committee. In paragraph No. 6 of the written statement, it is specifically pleaded that the land depicted in red is a park site, vested in and possessed by the Municipal

Committee, which has enclosed the same with barbed wire. Thus, on a cumulative assessment of the pleadings, it is evident that there is no dispute regarding the development of the colony by the plaintiff–society, the carving out of plots, and the earmarking of land for roads, streets, and parks. In such circumstances, no case is made out for permitting additional evidence, and the application filed by the appellant–plaintiff under Order XLI Rule 27 CPC is liable to be dismissed.

12.2. Adverting now to the question of vesting, the claim of the Municipal Committee is founded upon Resolution No. 1076 dated 31.12.1964. As noticed by the learned Trial Court, the plaintiff made efforts to summon and prove the said resolution and the original layout plan from the custody of the Municipal Committee. However, the officials of the Municipal Committee, despite appearing as witnesses, failed to produce the relevant records, and the defendant itself did not lead any affirmative evidence in support of its plea. In this backdrop, while the plaintiff has admitted that roads, streets, and parks vest in the Municipal Committee, the latter has sought to extend such vesting to all other open spaces as well an assertion which could have been substantiated only by producing the foundational resolution.

12.3. The Municipal Committee, being in possession of the best evidence, has conspicuously failed to place the same on record, thereby justifying the drawing of an adverse inference against it. A mere averment in the written statement, bereft of cogent and reliable evidence, cannot suffice to establish vesting of open spaces in the Municipal Committee. The learned Trial Court, therefore, rightly invoked the principle of adverse

inference and returned a well-reasoned finding in favour of the plaintiff. The learned First Appellate Court, however, reversed the said finding on conjectures and misappreciation of the evidentiary material.

13. As regards the reliance placed on ***Jesico Agro Engineering Pvt. Ltd. and Another vs. Municipal Committee, Jagadhri (supra)***, the same is clearly distinguishable on facts. In that case, the layout plan had been duly approved, and the areas reserved for roads and parks stood vested in the Municipal Committee under Section 61 of the Municipal Act. The dispute therein pertained to the unauthorized conversion of such earmarked areas into plots. In the present case, however, the controversy does not relate to roads, streets, or parks, but to other open spaces, for which no evidence of vesting in the Municipal Committee has been adduced.

14. In view of the foregoing analysis, the findings recorded by the learned First Appellate Court on Issue No. 2 are unsustainable and are accordingly set aside, while those of the learned Trial Court are restored. Consequently, the appeal is **allowed**, and the judgment and decree passed by the learned First Appellate Court are set aside, with restoration of the decree of the learned Trial Court.

15. Since the principal lis stands conclusively adjudicated, all ancillary, interlocutory, or pending applications, if any, shall, by necessary corollary, also stand disposed of, requiring no separate orders.

(VIRINDER AGGARWAL)
JUDGE

30.04.2026
Gaurav Sorot

Whether reasoned / speaking? Yes / No
Whether reportable? Yes / No