SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

“10. I Have Given Anxious Consideration to Rival Vs. Poonam Sohal and ors.

“10. I Have Given Anxious Consideration to Rival Vs. Poonam Sohal and ors.

SooperKanoon Citation : sooperkanoon.com/1069809

Court : Punjab and Haryana

Decided On : Aug-19-2013

Appellant : “10. I Have Given Anxious Consideration to Rival

Respondent : Poonam Sohal and ors.

Judgement :

Rs.No.3151 of 2009(O&M) #1# IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Rs.No.3151 of 2009(O&M) Date of Decision:-19.08.2013 Punjab Small Industries & Export Corpn.

& Anr .....Appellants.

Versus Poonam Sohal & Ors.....Respondents.

CORAM:- HON'BLE Mr.JUSTICE JASWANT SINGH Present:- Mr.Jivender Katoch, Advocate for the appellants.

Mr.S.K.Daaria, Advocate for Mr.HaRs.Aggarwal, Advocate for the respondents.

*** JASWANT SINGH, J.(ORAL) Defendants/appellants are in second appeal against the concurrent judgments passed by both the courts below whereby the suit of the respondent/plaintiff-Manjit Singh Sohal for declaration and permanent injunction was decreed by the learned Civil Judge(Jr.

Divn.).Ludhiana vide judgment and decree dated 27.10.2007 and the findings affirmed in appeal by the learned District Judge, Ludhiana vide judgment and decree dated 25.03.2009.

Facts in brief are that the plaintiff Manjit Sigh Sohal was allotted an industrial plot measuring 11,666.39 square yards bearing no.B- 62 in Phase-5, Focal Point, Ludhiana at the rate of Rs.350/- per square yards for running an industrial unit.

The allotment was for a period of 99 years on Mahajan Vinay 2013.08.22 16:51 I attest to the accuracy and integrity of this document at Chandigarh Rs.No.3151 of 2009(O&M) #2# lease hold basis.

It is admitted that the earnest money of a sum of Rs.4,60,000/- was deposited by the plaintiff on 21.5.1993.

The possession of the plot was handed over to the plaintiff on 1.7.1994.

The due installments were also paid in time as per the schedule.

It is also not in dispute that since the plot was uneven and there was lot of industrial waste lying, a rebate for a sum of Rs.6,10,000/- was also given to the plaintiff by the defendants/appellants.

The dispute is regarding the additional demand of Rs.20,50,573/- approximately as is due on 24.01.1997 towards 10% extra costs as the allotted plot being a corner plot.

Plaintiffs case is that the allotted plot is not a corner plot.

Both the courts below have concurrently found that the allotted plot no.B-62, Phase-5, Focal Point, Ludhiana to the plaintiff is not a corner plot and thus the defendants/appellants not entitled to raise the additional demand towards 10% extra cost being a corner plot.

The learned lower Appellate Court has noticed the admissions of the witnesses of the defendants as also examined the Ex.D-1 and Ex.D-2 to return such a finding.

The relevant para nos.10 & 11 of the Ist lower Appellate Court for ready reference is as under:- 10.

I have given anxious consideration to rival contentions.

The learned lower Court has dealt with the matter in controveRs.at length and in its judgment at page no.11 in paragraph no.11 has observed that both the parties produced on record, certain documents and evidence of witnesses.

DW-1 admitted in his cross examination, that he has seen the site plan prepared by Punjab Small Industries and Export Corporation.

As per site plan, plot no.B-62 in Phase- V, Focal Point, Ludhiana and as per factual position eastern Mahajan Vinay corner has nto been allotted to the plaintiff.

The abovesaid 2013.08.22 16:51 I attest to the accuracy and integrity of this document at Chandigarh Rs.No.3151 of 2009(O&M) #3# corner is in possession of the department and has not been allotted to any one.

The department does not want to allot the corner plot to any body.

The department plans to keep the corner land as vacant land.

DW-2 admitted in his cross examination that he has not dealt with allotment of plot, in dispute or plan pertaining to the same in the department of defendant in any capacity.

He has no personal knowledge regarding the facts pertaining to allotment or plot, in dispute.

He has not seen, original of Ex.D-1 or Ex.D-2.

The original are not available in his file of this plot, in dispute or in the office of defendants as he has not seen original at any time.

He further admitted that plaintiff had made representation that plot, in dispute, which was allotted to him was having heaps of industrial waste and husk.

It is correct that the corner portion of the plot shown in Ex.D-4 was not given to the allottee.

He further admitted that if any plot not having the corner part of its are 10% charges are not to be added to its cost.

He again stated that when the site of the plot is not corner, 10% extra is not charged.

He further admitted that the possession of the plot in dispute reported as on 1.7.1994.

He further admitted the whole pleadings of the plaintiff and documents placed on record by the plaintiff.

He further admitted Ex.P-24 and Ex.P- 25.

He further admitted that it is correct that corner of the plot has been kept resume by the department as open space.

The corner has not been allotted to any person.

The view of the admission of the Dws defendant failed to rebut the case of the plaintiff.

Keeping in view the evidence and documents placed on record by the plaintiff, the court is of the opinion that all these issues have been decided in favour of plaintiff and against defendants.

11. I do not find any error or illegality in above findings returned by the learned trial Court.

When own witnesses of defendant has admitted the whole pleadings of plaintiff and also admitted that plot allotted to plaintiff is not a corner plot and 10% extra was to be paid only, in case, corner Mahajan Vinay 2013.08.22 16:51 I attest to the accuracy and integrity of this document at Chandigarh Rs.No.3151 of 2009(O&M) #4# plot is allotted to the plaintiff, so demand of defendant regarding

10% extra amount regarding plot, in question, is illegal.

In paragraph no.2 of the written statement, defendant admitted that after considering the application of plaintiff, defendant has given rebate of Rs.6,10,000/- for removal of industrial waste/paddy husk ash.

It means, that defendant has given rebate of above said amount to the plaintiff of its own.

So, keeping in view totality of the facts and circumstances irresistible conclusion which I am going to draw is that learned trial Court has rightly decreed, suit of plaintiff and findings of learned trial Court are not suffering from any illegality or infirmity, so the same are affirmed.

At the time of hearing, learned Counsel for the appellants has failed to point out any illegality or infirmity in the judgments passed by both the courts below.

In view of the above, finding no question of law much less substantial question of law arising for determination in the present second appeal, the same is hereby dismissed.

(JASWANT SINGH) JUDGE August 19, 2013 Vinay Mahajan Vinay 2013.08.22 16:51 I attest to the accuracy and integrity of this document at Chandigarh

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com