

Krishna Devi Vs. Municipality

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Court : Punjab and Haryana

Decided On : Oct-09-1995

Reported in : (1996)112PLR530

Judge : N.K. Kapoor, J.

Acts : [Punjab Municipal Act, 1911](#) - Sections 182

Appeal No. : R.S.A. No. 2707 of 1985

Appellant : Krishna Devi

Respondent : Municipality

Advocate for Def. : Ashok Aggrawal, Sr. Adv. and; Rajinder Goyal, Adv. and; Vinod Sharma Adv. for Respondent No. 2

Advocate for Pet/Ap. : A.K. Mittal, Adv.

Disposition : Appeal dismissed

Judgement :

N.K. Kapoor, J.

1. This is unsuccessful plaintiffs regular second appeal.

2. Plaintiff filed a suit for permanent injunction restraining the defendant, Municipal Committee from issuing Teh Bazari of Khokha in occupation of Baldev Raj, defendant No. 2, in front of premises bearing No. 4143 situate at Ram Bagh Road, Ambala Sadar/Ambala Cantt. As per averments made in the plaint, it has been stated that the plaintiff is owner in possession of premises No. 4143. Defendant Municipal Committee had been leasing out the site beneath the wooden Khokha to certain persons and finally Baldev Raj, defendant No. 2, was inducted as a licensee in respect of the khokha. According to the plaintiff, the existence of khokha impaired the value and utility of the house which the plaintiff purchased vide sale deed dated 24.3.1982. Hence the present suit.

3. Defendant No. 1 in its written statement has taken the plea that the suit is not maintainable in the present form; that the civil court has no jurisdiction; that no notice Under Section 80 of the Code of Civil Procedure was given before filing the suit. However, the defendant admitted that the khokha in dispute was given on Teh Bazari earlier to Kharaiti Lal, Joti Parshad and Janak Raj and that Baldev Raj has applied for transfer of the Khokha on Teh Bazari in his name. It has further been stated that the Municipal Committee had the right to issue teh-bazari licence without, any hindrance.

4. On the pleadings of the parties, following issues were framed:-

1. Whether defendant No. 1 is not entitled to transfer teh-bazari from Kharaiti Lal etc. to defendant No. 1 as alleged? OPD

2. Whether existence of Khokha in front of the house of the plaintiff has materially impaired the value and utility of the building, if so, its effect? OPD

3. Whether the suit is not maintainable? OPD-1

4. Whether civil court has got no jurisdiction? OPD-1

5. Whether no notice Under Section 80 CPC or under the MC Act has been served upon the defendant No. 1, if so, its effect? OPD-1

6. Whether the plaintiff has got no locus standi to file the suit? OPD-2 7.

7. Relief.

The trial Court on considering the evidence led found no merit in any of the contentions raised by the plaintiff and so dismissed the suit vide judgment and decree dated 13.3.1985.

5. Before the appellate Court challenge was made to the conclusion of the Court of issue Nos. 1 and 2. The appellate Court once again examined the matter, and found no ground to differ with the conclusion arrived at by the trial Court. Resultantly, the appeal too was dismissed.

6. Before me, almost identical pleas have been raised which did not find favour with any of the Courts below. Learned counsel for the appellant, however, once again pressed that the matter be got examined by appointing a Local Commissioner so as, to see, the location of the Khokha, according to him, the same is in front the door of the house of the plaintiff. According to the learned counsel for, the appellant, the placement of Khokha in front of the entrance of the house interferes with her right of ingress and egress. The lower appellate Court examined this very aspect of the matter and has observed that the plaintiff in her pleadings has nowhere alleged that the khokha was interfering in her right of access to the building. Even otherwise, there is no evidence on record to support this assertion of the counsel for the appellant. Issues now raised are essentially issues of fact. The Courts below on the basis of evidence have come to the conclusion that no such inconvenience is being caused to the plaintiff by permitting the contesting defendant carrying on his business at the site allotted to him by placing a khokha on the municipal land. Concededly, the vacant land adjacent to the house of the plaintiff vests in the Municipal Committee and as per Section 182 of the Municipal Act, The Municipal Committee is competent to give the same on teh-bazari to any person. Thus, I find no infirmity in the conclusion arrived at by the Courts. The appeal being devoid of any merit is consequently dismissed.