

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.2250 of 2015

Date of decision : 08.09.2015

Kulwinder Singh

...Petitioner

Versus

Gram Panchayat Village Bhalwan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. D.S. Malwai, Advocate for the petitioner.

AMIT RAWAL, J. (Oral)

Challenge in the present petition is to the impugned order dated 13.03.2015 passed by Additional District Judge, Sangrur in Civil Appeal No.2 dated 21.01.2015, whereby, the order dated 05.01.2015 passed by the Additional Civil Judge, Senior Division, Dhuri in Civil Suit No.128 of 22.07.2014 allowing the application under Order 39 Rule 1 and 2, has been set aside, while accepting the appeal.

Mr. D.S. Malwai, learned counsel appearing on behalf of petitioner-plaintiff submits, that petitioner-plaintiff had filed suit for permanent injunction restraining the Gram Panchayat from demolishing the toilet measuring 4' x 4' marked as 'A' shown in red colour in the site plan owned and possessed by the applicants and from causing damage to the toilet. He further submits, that trial Court while taking into consideration

pleadings of the parties to the lis, much less, documentary evidence placed on record, found that existence of the toilet was admitted by the Gram Panchayat-defendant and accordingly Gram Panchayat was restrained from demolishing toilet in question forcibly and illegally or any obstruction in the use of the toilet during the pendency of the suit.

The aforementioned order has been upset by the Lower Appellate Court, by holding that as per the agreement to sell, property which the petitioner is alleged to have purchased do not show existence of the toilet and, therefore, found that petitioners-plaintiffs did not have any prima facie case, much less, balance of convenience and further found that in case toilet is demolished, no irreparable loss will be caused.

Mr. C.L. Premy, learned counsel had put in appearance on behalf of respondent No.1. No one has put in appearance on his behalf today.

I have gone through the impugned order.

The existence of the toilet is not disputed. As per the averments, toilet is being exclusively used by the plaintiffs, though, it is alleged that same is owned by them. It is yet to be adjudicated, whether the toilet was part of the agreement to sell or not, but the fact remains that toilet is being used by the petitioners-plaintiff continuously for a long period. The Gram Panchayat is well within the right to seek demolition/eviction of the property in respect of the toilet by resorting to the proceeding as provided under Punjab Village Common Land Act, 1961 but not by force or causing any demolishing, much less, interference in the use and occupation of the toilet.

It is settled law that person who is continuously in settled possession of the property cannot be forcibly dispossessed, except in due course of law. I intend to rely upon judgment rendered by Hon'ble Supreme Court in *Rame Gowda (D) by LRs Vs. Mr. Varadappa Naidu (D) by LRs & another, 2004(1) SCC 769*.

In my view, Lower Appellate Court has committed illegality and perversity in not noticing the fact that Gram Panchayat had not only admitted the existence of the toilet, but its use and possession by the plaintiffs. In such eventuality, the Gram Panchayat could only cause obstruction or hindrance, much less, demolish, by resorting to the legal remedy and not in the manner as apprehended by the plaintiff.

Keeping in view the aforementioned observation, impugned order dated 13.03.2015 passed by Lower Appellate Court is set aside and an interim injunction is granted in favour of the petitioner, that he shall not be forcibly dispossessed from the use and occupation of the toilet, much less, no hindrance or obstruction would be caused. In essence, parties shall maintain status-quo during the pendency of the suit.

However, this order of mine shall not prevent the Gram Panchayat for initiating proceedings in accordance with law.

Anything mentioned above shall not be construed as expression of opinion on merits and demerits of the controversy pending before trial Court.

Revision petition stands allowed.

08.09.2015

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**(AMIT RAWAL)
JUDGE**