

CR-5927-2015

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

CR-5927-2015

Date of decision: 10.9.2015

Damyanti Tomer

...Petitioner

Versus

Municipal Corporation, Karnal

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Vikram Singh, Advocate for the petitioner

SNEH PRASHAR, J.

The instant revision petition has been filed assailing the order dated 1.9.2015 passed by learned Additional District Judge, Karnal as well as order dated 1.5.2015 passed by learned Civil Judge (Junior Division), Karnal vide which the application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure (for short 'CPC') filed by the petitioner-plaintiff was dismissed.

Precisely the facts of the case are that the petitioner-plaintiff filed a suit for declaration and mandatory injunction on the ground that she is in actual physical possession of plots No. 6,8 and 10 situated near DAV School, Ram Nagar, Karnal since 1995. She had raised the construction of a Dairy over the plot after getting the site plan sanctioned from the office of the respondent- MC, Karnal.

She had approached the office of the respondent for transferring the ownership of the plots in question in her name on reserve price and not to get the same vacated, but no action has been taken by the respondent. Rather on the basis of resolution No.23 the suit plot has been sold at reserve price to one Balbir Singh. She moved an application to the Deputy Commissioner, Karnal for cancellation of the Resolution passed in favour of Balbir Singh. Also in the suit filed by her, she moved an application under Order XXXIX Rules 1 and 2 of the Code for restraining the respondents from dispossessing her from the suit land.

In the written statement, respondent-MC, Karnal submitted that the plots/ land belongs to MC, Karnal and it was the owner in actual and physical possession of the same.

The application filed by the petitioner was dismissed by learned Civil Judge (Jr.Divn.), Karnal vide order dated 1.5.2015 and aggrieved against the said order, plaintiff-petitioner filed an appeal before learned Additional District Judge, Karnal, which was also dismissed vide judgment dated 1.9.2015.

The submissions made by learned counsel for the petitioner have been heard.

Learned counsel for the petitioner contended that the Courts below committed grave illegality by dismissing her

application under Order XXXIX Rules 1 and 2 CPC by ignoring the fact that plaintiff-petitioner is in settled possession of the suit land since 1995. She had deposited the penalty amount of Rs.1000/- imposed upon her and had also placed on record the site plan got sanctioned by her from the Municipal Corporation, Karnal, which were admitted by the said respondent. Learned counsel asserted that a person in settled possession cannot be dispossessed forcibly and the possession can be taken only in due process of law. The petitioner is entitled to an injunctive order under the law for protection of her possession. To support his contention, he relied upon **Rame Gowda (D) by LRs vs. Mr.Varadappa Naidu (D) by LRs and anr. 2004 (1) RCR (Civil) 519** and **Puran and others vs. State of Haryana and others 2007(3) RCR (Civil)3.**

It is not a matter in issue that the respondent- MC Karnal is the owner of the suit land. In her pleadings itself, the petitioner admitted the said fact. The petitioner claims to be possession only for the reason that she is using the land in the shape of manure pits. The learned trial Court in the impugned order has specifically mentioned that perusal of the documents does not show that the petitioner was in settled possession of the suit land and is only a trespasser having no right in the same. The learned first appellate Court while dismissing the appeal of the petitioner -plaintiff vide judgment dated 1.9.2015 has observed as under:-

“Admittedly, the defendant- respondent- Municipal Committee is owner of the suit property. The plea of the plaintiff-appellant is that she is in settled possession of the suit property and therefore, she cannot be dispossessed except in due course of law. On the other hand, the defendant- respondent has denied the possession of the plaintiff-appellant over the suit property and has pleaded that it is in possession of the suit property. Even if for the sake of arguments, it is taken that the appellant-plaintiff is in possession of the suit property, even then she is not entitled to the relief of injunction because the property over which the plaintiff-appellant claims her possession is government property and thus it is prima facie a case of encroachment of public property. It is well settled law that a person who has encroached upon the government property is not entitled to protect his possession and no injunction can be granted to a rank tress-passer.

It is a specific finding of the trial Court affirmed by the first Appellate court that the petitioner is not proved to be in settled possession and is only a trespasser. By just collecting manure on the land the petitioner cannot claim that she is in settled possession. In **Premji Ratansey Shah v. Union of India, 1994 (5) SCC 547** The Hon'ble Supreme Court has held that no injunction can be granted to any encroacher against a true owner.

In exercise of revisional jurisdiction, I am unable to hold that the view taken by the Courts below on facts or in law is erroneous.

In the above premises, finding no illegality of perversity in the impugned order/ judgment passed by courts below warranting intervention, the present revision petition is hereby dismissed in limine.

10.9.2015

gsV

(SNEH PRASHAR)

JUDGE