

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 4079 of 2001 (O/M)
Date of decision : 9.12.2015

Jagmohan Singh and another Appellants

Versus

Cantonment Board, Ferozepur Cantt. and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sandeep Punchhi, Advocate, for the appellants.

Mr. O.P. Hoshiarpuri, Advocate, for respondent No. 1.

Ms. Kuljeet Kaur, Advocate, for,
Mr. L.S. Sidhu, Advocate, for respondents No. 2 to 6.

Mr. S.K. Jain, Advocate, for proforma respondent No. 7.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

Impugned in the present regular second appeal is the judgment and decree dated 9.8.2001, passed by the Additional District Judge, Ferozepur, reversing the judgment and decree dated 10.8.1998, passed by the learned Civil Judge (Junior Division),

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Ferozepur, vide which the suit of the plaintiffs for permanent injunction was decreed and defendant No. 2 was restrained from causing interference and forcibly dis-possessing the plaintiffs from suit land, measuring 18 kanals 18 marlas, situated in the area of Ferozepur Cantt., fully detailed in the headnote of the plaint, except in due course of law.

Briefly stated, the plaintiffs (appellants herein) had filed a suit for permanent injunction for restraining the defendants No. 1 and 2 i.e. Punjab Wakf Board, Ferozepur City and Cantonment Board, Ferozepur, from dis-possessing them from the suit land, bearing Khasra No. 576 min (10-18) and 578 min (8-0), measuring 18 kanals 18 marlas, situated in village Rukna Begu, Ferozepur Cantt., except in due course of law.

The plaintiffs/appellants claimed that they are in cultivating possession of the suit land for the last 10 years and khasra girdawari from Sauni 1989 onwards are in their name. The suit land is in the ownership of the Central Government. The defendants have no concern with the suit land.

Later on, the suit against defendant No. 1 was withdrawn. However, the suit was contested by defendant No. 2, namely, Cantonment Board through its Executive Officer, Ferozepur, which took the plea that no notice under Section 80 CPC was served upon them and that the suit land belongs to the Central Government

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and is under the management of Cantonment Board, Ferozepur.

The possession of the plaintiffs/appellants was denied.

The lower Court, after considering the copies of jamabandies and khasra girdawaris from year 1991 till Hari 1997, came to the conclusion that the plaintiffs/appellants are in possession of the suit land. It was further observed that the documents produced by the Cantonment Board (defendant) were to the effect that as per Survey No. 276, the suit land belongs to the Cantonment Board, Ferozepur. However, said survey report is not connected with the suit land. Therefore, the suit of the plaintiffs/appellants was decreed, restraining defendants from forcibly dis-possessing the plaintiffs/appellants from the suit land, except in due course of law.

The first appellant Court, while reversing the findings of the lower Court, took the view that though the plaintiffs/appellants are in possession of the suit land, but their possession is unlawful occupation on the public property. Therefore, they cannot claim injunction being the trespassers. Consequently, the suit filed by the plaintiffs/appellants was dismissed.

I have heard the learned counsel for the parties and have also carefully gone through the file as well as the lower Court file.

Both the Courts below have given concurrent findings of fact that as per the revenue record, the plaintiffs/appellants are in

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possession of the suit land. In the revenue record, the suit land is recorded to be in the ownership of Central Government. However, before this Court, CM No. 4745-C of 2004 was filed by the plaintiffs/appellants to bring into the notice of this Court, a Notification dated 3.10.1970 to show that the suit land has since been transferred to Punjab Wakf Board. The plaintiffs/appellants have also placed on file the Qabulyatnama (Pattanama) for the year 2002-03 to claim that they have now got the land on lease from Punjab Wakf Board. The present suit was filed in the year 1996. Though the origin as to how the plaintiffs came in possession of the suit land is not proved, but the fact remains that the suit land is recorded as graveyard since 1991 and the plaintiffs/appellants are in possession thereof. Admittedly, a trespasser is not entitled to decree for injunction. However, if the possession is established since long, he can only be dis-posessed in due course of law. Therefore, I am of the view that the first appellate Court erred in reversing the findings of the lower Court and declining injunction granted to the plaintiffs/appellants by the lower Court.

It being so, the present regular second appeal is allowed. The judgment and decree dated 9.8.2001, passed by the learned Additional District Judge, Ferozepur, is set aside and the judgment and decree dated 10.8.1998, passed by the learned Civil Judge (Junior Division), Ferozepur, is restored. However, it is made clear

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that the Cantonment Board, Ferozepur, if found to be owner of the suit land, can always initiate proceedings against the plaintiffs/appellants under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, for recovery of possession.

(KULDIP SINGH)
JUDGE

9.12.2015
sjks