

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4287 of 2011 (O&M)

Date of Decision: 17.07.2015

Municipal Corporation Gurgaon

.... Appellant

Versus

Smt. Dhan Kaur and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Gaurav Singh Hooda, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

The Municipal Corporation, Gurgaon is in second appeal against the concurrent findings of fact recorded by both the courts below in a suit filed for declaration to the effect that the plaintiffs are co-owners in possession of the suit property as described in para.1 of the plaint. There were two parts of the dispute between the parties before the trial court which have been adjudicated; Firstly, that court held that the plaintiff is in settled possession of the suit property which should not be disturbed lightly. Secondly, on the evidence, it has dismissed the suit qua declaration of title to the suit property holding that plaintiffs could not be treated as co-owners of the suit property. However, on the evidence available on the file, the trial

court after appreciating the same came to the conclusion that since possession was proven over the suit property, therefore the suit must succeeded partially and a permanent injunction deserves to be issued restraining the Municipal Corporation, Gurgaon from forcibly dispossessing the plaintiffs from the suit property except in due course of law.

Aggrieved by the judgments and decrees of the courts below, the Municipal Corporation has approached this court for setting aside the second relief granted against dispossession.

Mr. Hooda submits that the suit property lies in a grey area and it is not determinable whether it falls in the *abadi deh* or *abadi* land. Earlier, the property fell within the jurisdiction of the Gram Panchayat but later when the limits of the Municipal Corporation, Gurgaon were extended it fell in municipal area. Be that as it may, both the courts below after properly appreciating the evidence have returned a finding that plaintiffs are in possession of the property in dispute and I find no reason to differ with the view expressed by the court *a quo*. The plaintiff are not in appeal against denial of declaration with respect to ownership. Needless to say that in case an appeal is filed it would be decided on merits. This order will no be read as an affirmation of the first prayer.

Mr. Hooda relies on a Division Bench decision of this Court rendered in **Ramdhari vs. Gram Panchayat Nain and others**, 2014(3) RCR (Civil) 243 a case where the fact-in-issue was encroachment on vacant land in the *abadi deh* where land rights of persons are not described by khasra numbers. The case related to eviction of the petitioner under section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 against the

orders passed by the Collector and the Commissioner in revision. The assertion of the petitioner that he was in possession for the last 50 years as asserted by him did not find support on evidence and, therefore, his statement was falsified. The Court also observed that it was within the jurisdiction of the Assistant Collector to decide the question of title only if there is a prima facie proof of title on the basis of a document. Only then the amended law in Haryana Act of 1992 makes it mandatory for the revenue authority to act accordingly.

The present is not a case of encroachment over land in the *abadi deh* and this aspect has not been denied by Mr. Hooda during the course of the arguments. Therefore, I see no connection between the case cited and the facts of this case and the reliance placed on the ruling is misplaced.

On the same theme, learned counsel has cited another decision of a Division Bench of this court in **Gram Panchayat, Village Bir Kalwa vs. Commissioner, Ambala Division, Ambala**, 2015(1) RCR (Civil) 505 which decision is in pari materia with the other decision and is therefore distinguishable on facts.

I find no cogent reason to interfere with the judgments and decrees of the courts below and would dismiss the appeal. It cannot be said that any question of law, much less a substantial question of law arises in the appeal which deserves consideration in jurisdiction under section 100 CPC. The permanent injunction granted is innocuous and only restrains the defendants from dispossessing the plaintiffs from the suit property except by the due process of law. It is always open to Municipal Corporation, Gurgaon to follow due process and for this, but the judgments and decrees

of the courts below are not warranted to be intermeddled with in second appeal.

(RAJIV NARAIN RAINA)
JUDGE

17.07.2015
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