

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

**Regular Second Appeal No.4975 of 2012 (O&M)
Date of Decision: September 04, 2015.**

Mrs. Rawinderpal Kaur Somal

.....APPELLANT(s).

VERSUS

The Ludhiana Improvement Trust and Another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.S. Salar, Advocate
for the appellant (s).

Mr. Ashish Yadav, Advocate
for the respondents.

SURINDER GUPTA, J.

This is regular second appeal against the concurrent finding of Courts below whereby the suit of the appellant-plaintiff seeking the relief of injunction to restrain the respondent-defendant i.e. Ludhiana Improvement Trust through its Chairman from interfering in his possession over the plot measuring 401-1/3 sq yards (42'x46') forming part and parcel of khasra No.3491/98 khewat No.650 khatauni No. 1017 as entered in the jamabandi for the year 2000-01 at village Gill, HB No.263, Tehsil and District Ludhiana (now known as Ranjit Nagar), was dismissed.

(In the later part of the judgment, the parties will be referred as plaintiff and defendant as per the civil suit).

The case of the plaintiff, in brief, is that he had purchased disputed property vide sale deed dated 06.03.1992 from Malkiat Singh, resident of village Gill, Tehsil and District Ludhiana. At the time of execution of the sale deed, room and compound was in existence at the spot. Thereafter, the area was developed by Municipal Corporation, Ludhiana and streets were laid. The development charges were deposited by the inhabitants of the locality, known as Ranjit Nagar.

The defendant contested the claim of the plaintiff inter-alia pleading that the suit was bad for want of notice under Section 98 of Punjab Town Improvement Act. Vide notifications under Section 36 on 08.06.1973 and under Section 42 on 26.07.1974, the land bearing khasra No.3491/98 measuring 0 bigha 8 biswa 16 biswansi and other adjoining land were acquired. As per the revenue record, this land was ownership of Malkiat Singh. The possession of entire land acquired by the defendant was taken on 27.08.1978 and the defendant became owner of the land acquired vide award dated 05.08.1977. Plaintiff, who claims to be a subsequent vendee from Malkiat Singh, has no right, title or interest in the suit property. It was also denied that Municipal Corporation, Ludhiana carved any street over the suit property.

The suit was dismissed by Additional Civil Judge (Senior Division), Ludhiana and it was held that the suit land was part of the land acquired vide award dated 05.08.1977. The possession of the acquired land was also taken by Ludhiana Improvement Trust vide DDR dated 29.08.1978. Malkiat Singh was left with no right, title or interest in the suit property, as

such, he could not sell the same. The appeal filed by the plaintiff was also

dismissed by the Additional District Judge, Ludhiana.

I have heard learned counsel for the parties and have perused the paper book with their assistance.

At the very outset, learned counsel for the appellant conceded that the suit land was acquired by Ludhiana Improvement Trust vide award dated 05.08.1977. However, the plaintiff, even if, has no title over the suit property, on the basis of his possession, is entitled for the relief of injunction and defendant cannot oust him from the suit property except in due course of law. It has been argued that defendants have moved an application for police help to dispossess the plaintiff and this proves the possession of the plaintiff over the suit property. Both the Courts below have committed grave error of law and fact while dismissing the suit of the plaintiff.

Both the Courts below have rejected the contention of the plaintiff about his possession over the suit land keeping in view the fact that the suit land and other land of Malkiat Singh was acquired and he was paid the compensation. Now, on the basis of sale deed which is illegal, null and void, plaintiff cannot claim title or possession over the suit land. Reliance has been placed on the entries in the jamabandies to prove possession of plaintiff over suit land. Jamabandi is not a document, which could be relied with regard to the possession of urban habitable property. In case *Premji Ratansey Shah and others Vs. Union of India and others, 1994(5) SCC 547* it was observed that injunction cannot be allowed against true owner.

The appellant-plaintiff has no status of his claim for possession over suit land and he failed to prove his settled possession over suit land.

Law presumes the possession to go with the title unless rebutted. The owner

may prevent even by using reasonable force a trespasser from an attempted trespass. In the facts and circumstances of this case, the Court would not loath to grant protective relief of perpetual injunction in favour of appellant against the true owner.

On perusal of the judgments of both the Courts below, I do not find any legal or factual infirmity therein and denial of injunction sought by appellant cannot be held to be illegal so as to call for interference in this second appeal.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

September 04, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE