

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

RSA No.713 of 2012 (O&M)
Date of decision : 20.08.2015

Dhan Singh and another

...Appellants

Versus

Municipal Committee, Loharu 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. Keshav Partap Singh, Advocate for
Mr. S.K. Chauhan, Advocate for appellants.

Mr. Bikram Chaudhary, Advocate for respondents.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the impugned judgment and decree dated 03.10.2011 rendered by Lower Appellate Court , whereby the suit for declaration and permanent injunction filed at the instance of appellants-plaintiffs, which was decreed, has been set aside.

Mr. Keshav Partap Singh, learned counsel appearing on behalf of appellants submits that appellants had filed suit for declaration and permanent injunction. However, appellants, in order to prove ownership in possession has placed on record proof Ex.P1 to Ex.P9, documents showing

settled possession of the property in dispute. The necessity to file the suit was to challenge the notices Ex.P9 & Ex.P10 which were served upon plaintiff by the Municipal Committee, for alleged encroachment of public street. He further submits that notices were sent in regard of alleged encroachment. The trial Court on the basis of oral and documentary evidence decreed the suit by granting the declaration of title as well as injunction. However, Lower Appellate Court on account of grounds/pleas taken by respondent-Municipal Committee, reversed the findings. He further submits that de hors of the fact that appellants-plaintiffs had not been able to prove the title at least entitled to injunction in view of long settled possession. In support of the contentions, he has relied upon judgment rendered by *Rame Gowda (D) by LRs Vs. Mr. Varadappa Naidu (D) by LRs & another* 2004(1) SCC 769.

Mr. Bikram Chaudhary, learned counsel appearing on behalf of Municipal Committee submits that though liberty has been granted to the Municipal Committee to proceed in accordance with law as the appellants-plaintiffs have been found to have encroached upon public street but there is no illegality & perversity. In this regard, Local Commissioner has prepared the demarcation report and examined his report marked as Mark A. The appeal does not involves any substantial question of law.

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

No doubt that appellants-plaintiffs have not been able to prove the title, the trial Court, thus, in my view committed no illegality in not granting declaration vis-a-vis the title, but the fact, remains that appellants-

plaintiffs have been able to prove long settled possession. The Demarcation Report Mark-A has not been proved in accordance with law inasmuch as author of the report has not appeared in the witness box. The appellants-plaintiffs have been deprived right to cross-examine the same. In my view Municipal Committee was required to get the property demarcated by calling upon appellants. In case the appellants-plaintiffs had been found to be in excess possession of area/encroach, one, action in accordance with law was required to be initiated.

In my view, following substantial question of law arises for the determination by this Court:-

1. Whether the appellants-plaintiffs who are in continuous and settled possession of the property are entitled to injunction and cannot be dispossessed except in due course of law?

The ratio decidendi culled out by the Hon'ble Supreme Court leaves no manner of doubt that person who has been in continuous and settled possession cannot be dispossessed except in due course of law. Ex.P1 to Ex.P9 are documents showing that appellants-plaintiffs are in long settled possession and the alleged notices in my view are liable to be declared null and void, in the absence of proof of demarcation report. The Municipal Committee failed to prove alleged encroachment by not leading any direct, much less, cogent evidence.

In view of what has been observed above, question of law above-mentioned is answered in favour of the appellants-plaintiffs and is entitled to decree of permanent injunction.

Accordingly, suit of the appellants-plaintiffs vis-a-vis the grant

of permanent injunction is hereby decreed. He shall not be dispossessed in respect of the excess area/encroach one except in due course of law. Municipal Committee is at liberty to get the property demarcated and proceed in accordance with law. The questions of law arises is thus answered in favour of appellants-plaintiffs and against respondents.

With the aforementioned observation, the present appeal stands allowed and impugned judgment and decree vis-a-vis non granting of injunction is set aside and qua declaration is upheld.

20.08.2015

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**(AMIT RAWAL)
JUDGE**