

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 1553 of 2013 (O&M)
Date of decision: February 05, 2015

Sher Singh

.....Appellant

versus

Municipal Council, Amloh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Avnish Mittal, Advocate
for the appellant.

JASPAL SINGH, J

A litigious appellant/plaintiff has preferred instant regular second appeal feeling dissatisfied against judgment and decree dated January 25, 2013 confirming the judgment and decree of learned trial Court passed in civil suit No.193T dated September 22, 2004 captioned as Sher Singh vs. Municipal Council, Amloh and others whereby, civil suit preferred by him for declaration to the effect that he is the lawful owner in possession of property comprised in Khata No. 228/314-315, 316 Khasra no. 84/2/4/2/2/3 (14-19), 84/2/4/2/2/2/ (0-7), 84/2/4/2/2/1 (0-7) to the extent of 4/313 share, Khata No. 229/321, Khasra no. 84/2/4/3 (0-9) and Khata no. 233/384 Khasra no. 84/2/4/1/3 (1-0) to the extent of ½ share as per Jamabandi for the year 1996-97 situated within Revenue Estate of Bir

Amloh and suit for declaration to the effect that the notice dated April 03, 1997, orders dated July 11, 2002 and dated February 09, 2004 passed by the then Collector, Amloh and also the order dated June 24, 2003 passed by Deputy Commissioner Fatehgarh Sahib (exercising the powers of Commissioner under the Punjab Public Premises and Land Eviction & Rent Recovery Act) are illegal, null, void, inoperative, without jurisdiction and not enforceable in the eyes of law and also for seeking permanent injunction restraining the defendants, their agents and their employees from enforcing/executing the above said orders till the decision of the case, on the ground that plaintiff is lawful owner in possession of suit property as per jamabandis for the years 1981-82, 1986-87, 1991-92, 1996-97 and 2001-02, was dismissed.

2. The case of appellant/plaintiff as set out in the plaint is that he is owner in possession of property in dispute and it does not form part of above-referred Khasra numbers. Since, there is no public street exists at the spot therefore, provisions of Punjab Public Premises and Land Eviction & Rent Recovery Act (for short 'Act') are not attracted. Whereas, this case has been resisted by respondent-Municipal Council on the ground that public street exists at the spot, which vests in the Municipal Council, Amloh and further that existence of street is fully established on the documents placed on record by the parties in support of their respective pleadings.

3. After hearing learned counsel for the parties and appraisal of evidence, suit of appellant/plaintiff was dismissed holding that he is

not the owner of property in dispute which otherwise confirms a part of Municipal Council, Amloh and further that Collector, Amloh was legally competent to initiate proceedings under various provisions of Act. Resultantly, suit of appellant/plaintiff was dismissed by learned trial Court vide impugned judgment and decree dated December 21, 2011. An appeal preferred by appellant-plaintiff before lower Appellate Court was also met with the same fate and was dismissed vide impugned judgment and decree dated January 25, 2013.

4. Aggrieved against judgments and decrees passed by both the courts below, plaintiff-appellant has preferred the instant regular second appeal.

5. While assailing impugned judgments and decrees passed by both the courts below, it has been vehemently argued by learned counsel for appellant/plaintiff that mis-appreciation of evidence as well as legal proposition applicable to the facts and circumstances of the case in hand has resulted into miscarriage of justice. In fact, learned courts below have failed to appreciate that suit property is a private property of appellant/plaintiff and it is duly proved by evidence on record that appellant/plaintiff is lawful owner in possession of suit property as per jamabandis 1981-82 to 2001-02. It is also amply proved on record that there is no public street left by vendor or by Municipal Council, Amloh out of Khasra numbers referred in various jamabandis.

6. Moreover, appellant/plaintiff has sought declaration with respect to his own property to avoid any dispute with his

neighbourhood and bona-fidely sought permanent injunction against respondents-defendants with respect to his peaceful possession. Whereas, learned courts below have wrongly relied upon evidence available on record and passed a wrong and perverse judgments and decrees, which have brought total injustice to the appellant/plaintiff.

7. Similarly, both the courts below have also failed to appreciate the fact that definition of street and public street are envisaged in Punjab Municipal Act, 1911. Section 3 sub-clause (3) (a) and (6) which provides the procedure regarding sanctioning and declaration of public street but neither any such procedure was adopted nor at any point of time the street was declared as a public street. Since, property in suit is not a public street, the revenue authorities have got no right to pass any eviction order under the provisions of Act. So, substantial questions of law arise in this appeal is whether occupation of a private street can be termed as an encroachment under the Public Premises Act and that whether adverse inference is to be drawn against Municipal Council for not producing the relevant documents in evidence and whether in the absence of any cogent evidence with regard to ownership, any private passage can be termed as a public street.

8. While concluding the arguments, learned counsel for the appellant/plaintiff submits that since judgments and decrees passed by both the courts below are not sustainable in the eyes of law and therebeing, no substantial question of law, appeal deserves to be admitted for final hearing.

9. After hearing learned counsel for the appellant at length and elaborately going through the judgments and decrees passed by learned courts below, this Court is of the considered view that various contentions put forth by learned counsel for the appellant do not carry any legal substance and findings recorded by both the courts below are absolutely in consonance with evidence available on file and settled canons of law.

10. At the very outset, it would not be out of place to mention that though appellant has claimed himself to be owner in possession of the property in dispute but to the utter surprise he did not place on record any document to establish his ownership. Rather to falsify the averments put forth by the appellant before learned courts below, Municipal Council had to place and prove on record the copies of sale deeds Ex.D5 and D6 vide which appellant purchased 4 marlas and 9 marlas of land and raised construction thereon. A perusal of both the sale deeds makes it crystal clear that there exists 12 feet wide street on the southern side of plot of appellant.

11. Not only this in the site plan submitted by him to Municipal Council in the year 1981 the existence of street has been depicted and this is an admitted fact. The matter did not end here. Appellant/plaintiff in civil suit No. 267 of July 22, 1982 Ex.D1 himself admitted the existence of 12 feet wide street in between his plot and plots of respondents-defendants. In that suit, Municipal Committee was also one of the parties. It was only thereafter, the street was brick pave by Municipal Committee, Amloh and is being used as such

by inhabitants of the locality. The dispute raised under the provisions of Act was also taken up by appellant/plaintiff to this Court but ultimately culminating it in favour of occupants. So, there is a bundle of documents available on file which can be termed to have been intentionally withheld by appellant/plaintiff, shows that there exists a street on the southern side of plot of appellant/plaintiff and the proceedings under the provisions of Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 are legally justified.

12. In the light of what has been discussed above as well as in view of concurrent findings of both the courts below, this Court does not find any question of law. Accordingly, appeal stands dismissed whereby impugned judgments and decrees passed by both the courts below are upheld.

(JASPAL SINGH)
JUDGE

February 05, 2015
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- 1. Whether the Reporters of the Local papers may be allowed to see the judgment? Yes**
- 2. To be referred to the Reporters or? Yes**
- 3. Whether the judgment should be reported in the digest? Yes**