

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1904 of 2015(O&M)
Date of decision : December 15, 2015

Gram Panchayat of Village Saphera

..... Appellant

Versus

Gurnam Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Bhag Singh , Advocate
for the appellant.

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

Amit Rawal, J (oral).

The appellant-defendant is aggrieved against the judgment and decree of the lower appellate court, setting aside the judgment and decree of the trial court whereby the suit claiming permanent injunction against the defendants not to forcibly dispossess the plaintiffs except in due course, of law has been dismissed.

Learned counsel for the appellant-defendant No.3 submits that the possession of the respondents-plaintiffs is *najayaz kabja* (un-authorized), this fact has been noticed by the trial court in paragraph 10 and 11 of the judgment, which reads as under:-

From the arguments addressed by counsel for the parties

and further keeping in view the facts of the case and judicial pronouncements as mentioned above, it is clear that the dispute regarding ownership of the suit property is pending before the revenue authorities and the same is yet to be decided. This means that the plaintiffs or for this matter the other proprietors of village Saphera are not yet having any ownership rights over the suit property and the factum regarding pendency of the ownership dispute negates the contention of the plaintiffs as averred in the plaint that they along with the other proprietors of village Saphera are the owners in possession over the suit property. The plaintiffs have placed reliance upon the jamabandi for the year 2002-03, a copy of which is Ex.P1 to show that they have been in possession over the suit property, but a perusal of this jamabandi itself reveals that the said possession, if any, has been mentioned as illegal and the exact words are written as "najayaz Kabza". Even in the jamabandi for the year 2007-08, the same words i.e. "najayaz Kabza" have been mentioned. A perusal of this jamabandi further shows that the description of the suit property has been inter alia given as " Gair Mumkin Rasta, Banjar Kadim etc." which means that there is no cultivation over a major portion of the same and such an entry nullifies the contention of the plaintiffs that they are in cultivating possession over the suit property along with the other proprietors. The contention of the plaintiffs that the Gram Panchayat had never given the suit land on lease is not tenable as ex.D21 which is the extract from the Proceeding Book of the gram Panchayat goes on to prove that the suit land has been leased out regularly only for the benefit of the village community.

Puna Municipal Corporation" (supra), the Court held that it is a settled law that no injunction could be granted against the true owner at the instance of persons in unlawful possession.

*In "**Joginder Singh versus State of Haryana and others**"(supra), the Hon'ble Punjab and Haryana High Court was of the view that when the fact that the petitioners are in unauthorized occupation of the land has been duly established by getting the land demarcated, then the eviction was rightly ordered and the petitioners did not deserve any legal or equitable relief under the provisions of law.*

*In yet another important case of "**Mohan Lal versus Mohan Singh**" (supra), the moot question was with regard to grant of ad interim injunction in cases involving public properties and public interest. Hon'ble Mr. Justice G.S.Singhvi in para 5 of the judgment stated as under —*

"Apart from the three ordinary ingredients which must be satisfied for grant of injunction in favour of a plaintiff/petitioner,namely, a strong prima facie case, balance of convenience and irreparable injury, in cases involving public properties and public interest, the Courts have to bear in mind as to whether the grant of injunction would be conducive or detrimental to public interest. The Courts have to take note of the fact that Government lands belonging to the public at large and the community as a whole is entitled to enjoy the properties belonging to the Government. In fact, the Government holds property as a trustee of the people and, therefore, where any attempt is made by an individual or a group of individuals to misappropriate/misuse or otherwise interfere with the enjoyment of public property by the people in general, the

Courts have to be extremely cautious in granting injunction in favour of such person only on the ground that he is in possession of the property. Possession of public property by such an individual or a group of individual is no possession in the eyes of law. Such a person cannot claim any right whatsoever on the basis of unlawful occupation of the public property and Courts would be justified in declining any assistance to such a person. In such like cases, a plaintiff cannot claim private property. Moreover, the Courts have to act as guardian of the public property and should not pass an order of injunction in favour of a person who has made unauthorized encroachment of the public property."

The appellate court without noticing the aforementioned facts held that no injunction can be granted against the true owner and decreed the suit. In essence, enjoined the appellant-defendant not to forcibly dispossess the plaintiffs, except in due course of law.

I have heard learned counsel for the appellant and appraised the paper book.

No doubt that the previous law laid down by the Hon'ble Supreme Court provided that no injunction can be taken in favour of a true owner. However, this proposition of law was re-considered by the Hon'ble Supreme Court in **Rame Gowda Vs. M. Varadappa Naidu(dead) by L.Rs and another (2004) 1 SCC 769** where it has been held that a person who is in long and settled possession cannot be dispossessed except in due course of law.

The finding rendered by the trial court ex facie prove

that the possession of the respondents-plaintiffs was najayaz kabja (un-authorized) which proved that the plaintiffs had been in continuous and settled possession. The remedy, if any, for the Gram Panchayat is to take recourse to the law by following an appropriate procedure but cannot forcibly dispossess the person in settled possession.

I am in agreement with the findings rendered by the lower appellate court decreeing the suit not to dis-possess the plaintiffs except in due course of law.

I do not intend to differ with the finding rendered by the lower appellate court which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

December 15, 2015
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