

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

Sr. No.: 104

**Regular Second Appeal No.1939 of 2015 (O & M)**

**Date of Decision:** *December 09, 2015*

**Dr. Rajesh Loomba & others**

..... APPELLANTS

*VERSUS*

**Estate Officer -cum- Deputy Commissioner, Ambala & another**

..... RESPONDENTS

. . .

**CORAM:**    **HON'BLE MR. JUSTICE JASPAL SINGH**

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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?

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**PRESENT:** -    Mr. Akshay Bhan, Senior Advocate, with Mr. Vaibhav Sahni, Advocate, for the appellants.

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**Jaspal Singh, J**

1.             The instant appeal has been preferred by the plaintiffs feeling aggrieved by judgment and decree dated October 29, 2014 rendered by lower appellate court whereby judgment and decree dated November 2, 2010 passed by the trial court was set aside.

2.             Brief facts of the case are that appellants – plaintiffs filed a suit seeking a decree for permanent injunction, to restrain the defendants – respondents from acting upon notices dated January 8,

2013 in respect of building constructed on land adjoining to the north of property No.6353/32, situated on Jagadhri Road, Ambala Sadar and also to restrain the defendants from interfering in the peaceful possession of plaintiffs over the said property. The suit was resisted by the defendants – respondents by filing joint written statement. Replication was also filed by the plaintiffs controverting the stand of defendants taken in written statement. From the pleadings of parties, following issues were framed by the trial court:-

1. Whether plaintiffs are entitled to a decree for permanent injunction as prayed for? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? If so, its effect? OPD
4. Relief.

3. Both the parties led evidence in support of their respective case. Plaintiffs examined PW-1 Uma Shanker, DRK Ambala; PW-2 Hari Chan, Clerk, Municipal Corporation, Ambala Sadar; and PW-3 Dr. Rajesh Loomba. Defendants examined DW-1 Hari Chand, Clerk Office of Assistant Estate Officer, Excise Area, Ambala Cantt.

4. After learned counsel for the parties and appraisal of evidence, oral as well as documentary, suit of the plaintiffs was decreed with costs vide judgment and decree dated November 2, 2010 passed by the trial court. Defendants were restrained from acting upon notices bearing No.ESTO/20-21-22 dated January 8, 2003 in respect of building

constructed on the land adjoining to north of property No.6353/32 situated on Jagadhri Road, Ambala Sadar. Defendants were also restrained from interfering in the peaceful possession of plaintiffs over the suit property as well as buildings fully detailed in site plan in red colour. Aggrieved defendants preferred an appeal before the lower appellate court challenging the aforesaid judgment and decree. The lower appellate court, vide judgment and decree dated October 29, 2014, accepted the appeal and set aside the judgment rendered by the trial court holding that plaintiffs are not entitled to permanent injunction and their suit is not maintainable.

5. Now, plaintiffs (appellants herein) have impugned judgment and decree dated October 29, 2014 passed by the lower appellate court.

6. While assailing the impugned judgment and decree, learned counsel for the appellants contends that appellants – plaintiffs are Doctors by profession and are running a hospital known as ‘Loomba Hospital’ in property No.6353/32 alongwith adjacent land which was taken on lease by them for a limited period of 5 years. The Municipal Council, Ambala Sadar, granted sanction to raise construction on the disputed property for a limited period only. Even after expiry of the lease period, the appellants – plaintiffs are in continuous possession of the property in suit, and as such, they cannot be dispossessed or ousted

from the property in question by Municipal Council or other agents or officers by using force. They can only be ejected in due course of law.

7. This Court has given a deep thought to the aforesaid submissions made by learned counsel but find the same to be devoid of any merits.

8. Undisputedly, appellants took the property in suit on lease for a period of 5 years and the said period was never got extended by the appellants from Municipal Council. After expiry of period of 5 years, their possession over the property in suit is that of an unauthorised occupants and an unauthorised occupant is not entitled to any sort of injunction against the owner. Moreover, possession of the property in suit is being taken by the Municipal Council in accordance with law as the present appellants were served with notices for vacation of the premises in question.

9. In view of settled proposition of law that no injunction can be granted against the owner at the instance of an unauthorised occupant, suit for injunction is not maintainable. The suit filed by the appellants – plaintiffs for permanent injunction has rightly been dismissed by learned lower court as well as the first appellate court. Finding no merit in the instant appeal, the same stands dismissed.

**December 09, 2015**  
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**(Jaspal Singh)**  
**Judge**