

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

Regular Second Appeal No.2210 of 2015 (O&M)
Date of decision: 17.08.2015

Hukam Singh and others

... Appellants

versus

Gram Panchayat, Village Pipli and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ramesh Hooda, Advocate,
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. The plaintiff, who filed a suit for injunction after the order of eviction was obtained under the Public Premises Act, lost before the trial Court by his inability to prove that the order passed directing eviction was erroneous and that the property claimed encroachment by the State was his own separate property. There ought to be a difference between a suit filed challenging the order already passed by a public authority in exercise of powers granted under the Act and a suit filed without reference to it. An authority that passes an order of eviction does so on its assessment that the property is a public property in respect of which an unauthorized

occupation has come about and, therefore, when the plaintiff was ordered to be ejected, the intervention that the civil court could make was only the positive proof of the plaintiff's entitlement to the property over which eviction was ordered and to show that the property held was not a public property in respect of which any action could have been taken under the Public Premises Act.

2. The plaintiff's contention is that he was making claim with reference to a property of an extent of 5 kanals 7 marlas which was comprised in Khasra No.45/25 and the Government was taking action as though the said khasra number with the sub division admitted of plaintiff's entitlement only to 5 kanals 3 marlas. At the stage when an order of eviction was passed already, the limit of enquiry for a civil court will be only to consider of what the plaintiff is able to show that eviction order was passed without jurisdiction as in relation to a private property over which the government did not have a right. If such a positive proof was not possible to be brought at the instance of the plaintiff, a mere non-reference to a public pathway in the consolidation proceedings could not come to the rescue of the plaintiff. We are also not making an issue of the fact that there are proceedings still pending before the Director Consolidation for treating the property as a separate property of the plaintiff so long as there are no such order passed so far. The plaintiff cannot be seen to be in lawful possession. The order of

ejectment already passed under the Public Premises Act must take its full course and the intervention sought through an injunction suit cannot be permitted. I find no error in the decisions taken by the courts below for intervention. The second appeal is dismissed.

(K.KANNAN)
JUDGE

17.08.2015
sanjeev