

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

**RSA NO. 2377 OF 2015 (O&M)
DECIDED ON : 02.07.2015**

Harpal Singh

...Appellant

versus

Gram Panchayat/Gram Sabha and another

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. N. S. Diwana, Advocate.

K. C. PURI, J.

The unsuccessful plaintiff has directed this regular second appeal against the judgment and decree dated 20.03.2015 passed by Shri Sanjiv Berry, District Judge, Fatehgarh Sahib, vide which the appeal preferred by the plaintiff against the judgment and decree dated 07.03.2014 passed by Shri Gaurav Dutta, Civil Judge (Junior Division), Fatehgarh Sahib, was dismissed.

Briefly stated, plaintiff filed a suit for injunction with the allegations that plaintiff was owner in possession of the suit property which is a residential house and courtyard. It was further alleged that the plaintiff was in actual, peaceful, continuous and uninterrupted possession of the suit land. Due to groupism in village, Major Singh who was Sarpanch of the village threatens to cause interference in the possession of the plaintiff over the suit

property under the colour of his office, by carving out a street illegally and forcibly. The plaintiff requested the defendants to admit the claim and not to interfere in his possession, but the defendants refused. Hence, the suit was filed.

Upon put to notice, defendant No.1 appeared and filed written statement taking preliminary objection that the plaintiff has concealed material facts from the court; that the suit is not maintainable; that the suit is barred under section 13 of PVCL Act, 1961. It was further pleaded that plaintiff was not entitled to relief of permanent injunction because plaintiff and his brother Sunder Singh have encroached upon the portion of the passage as shown in the site plan. The other averments were denied.

Defendant No.2 did not appear and as such, he was proceeded ex parte.

Replication was filed denying the contents of the written statement and reiterating the averments made in the plaint. From the pleadings of parties, following issues were framed :-

- 1) Whether the plaintiff is in possession of suit land ?
OPP
- 2) Whether the plaintiff is entitled to injunction, as prayed for? OPD
- 3) Whether the suit is barred under Section 13 of the Punjab Village Common Land (Regulation) Act, 1961 ?
OPD
- 4) Relief.

In order to prove his case, plaintiff himself appeared as PW-1 and examined Sadhu Singh, Draftsman as PW-2, Gurdev Singh as PW-3, Lakhvir Singh, Clerk of Shri Rahul Sharma, Advocate as PW-4 and closed the evidence.

On the other hand, the defendant Tarlochan Singh as DW-1 and examined A. L. Verma as DW-2 and closed the evidence after tendering certain documents.

The learned trial court, after appraisal of the evidence, dismissed the suit of plaintiff. Feeling dissatisfied with the above said judgment and decree dated 07.03.2014 passed by Shri Gaurav Dutta, Civil Judge (Junior Division), Fatehgarh Sahib, the plaintiff preferred first appeal. The said appeal was dismissed vide judgment and decree dated 20.03.2015 passed by Shri Sanjiv Berry, District Judge, Fatehgarh Sahib.

Still feeling aggrieved with the judgment and decree dated 07.03.2014 passed by Additional Civil Judge (Senior Division), Fatehgarh Sahib and judgment and decree dated 20.03.2015 passed by District Judge, Fatehgarh Sahib, the plaintiff has preferred the instant regular second appeal.

Learned counsel for the appellant, in para no. 6 of the grounds of appeal, has mentioned that following substantial questions of law have arisen in the present appeal :-

- 1) Whether the courts below were/are justified in the eyes of law to non-suit the plaintiff-present appellant for his failure to prove his title over the suit property in the absence of any such issue having been framed by the courts below ?

2) Whether the findings returned by the courts below on Issues No.1 and 2 are perverse and contrary to the onus returned on Issue No.3 ?

3) Whether the courts below exceeded their jurisdiction and committed grave error in law by attracting wrong and inapplicable to the facts of the case in hand while passing their impugned judgments and decrees under challenge in this regular second appeal and thus rendering the same illegal and unsustainable in the eyes of law ?

I have heard learned counsel for the appellant and have gone through the case file carefully.

Learned counsel for the appellant has submitted that no issue regarding ownership was framed. However, both the courts below have dismissed the suit mainly on the ground that plaintiff has failed to prove the ownership. It is further contended that in a suit for permanent injunction, the possession of the plaintiff has to be protected even if he is a trespasser. The case of defendants themselves is that the plaintiff has encroached upon the land of Gram Panchayat. So, both the courts below have committed grave error by not decreeing the suit of the plaintiff and restraining the defendants from dispossessing the plaintiff from the suit land except by due course of law.

It is settled law that concurrent finding of fact recorded by both the courts below cannot be interfered except where the judgment is perverse and is the result of misreading and misinterpreting the evidence on file. The case of defendants is that the plaintiff has encroached upon the portion of the passage. There

is nothing on file to show that the said finding is the result of misreading and misinterpreting the evidence on record. It is settled law that no injunction in respect of passage can be allowed. The courts are the guardian of the public property. If any person encroaches upon the passage, in that case, the civil courts will not come in rescue of that wrongdoer. Both the courts below have rightly held that on the facts of present case, no injunction can be issued against the true owner. Both the courts below have given a concurrent finding that the plaintiff has failed to prove his legal right in the suit property. So, without any legal right, no injunction can be granted.

Learned counsel for the appellant has relied upon authorities "**Udey Singh vs. Gram Panchayat Nangal Jat**" 2010 (1) Civil Court Cases 406 (P&H) and "**Maria Margarida Sequeria Fernandes and others vs Erasmo Jack de Sequeria (Dead) through L.Rs**" 2012 (2) Civil Court Cases 344 (SC).

There is no dispute to the proposition of law that in a suit for injunction, ownership is not required to be proved but at the same time, it is also settled law that no injunction in respect of land or passage can be granted, more so, in respect of public property. From the perusal of file, it is revealed that one Sunder Singh earlier filed a suit with regard to the land in dispute and the said suit was dismissed on 25.11.2010. The copy of said judgment has also been placed on record. One Sunder Singh has earlier also knocked the doors of the court and after having been failed in that litigation, another spell of litigation has been opened by the present plaintiff.

Both the courts below do not find favour in respect of claim of the plaintiff.

So far as authority ***Udey Singh's case (supra)***, is concerned, the same is distinguishable from the facts of present case as in that case the plaintiff was found in possession and has constructed a house and under that circumstances, the court passed the decree for permanent injunction. Moreover, the said authority does not relate to a passage.

So far as authority ***Maria Margarida Sequeria Fernandes and others' case (supra)*** is concerned, the same is also distinguishable from the facts of present case as it does not relates to the passage. This court and the Hon'ble Apex Court time and again have held that no injunction in respect of passage should be granted.

In these circumstances, I have no hesitation in holding that no substantial question of law has arisen in the instant appeal. Consequently, the appeal is without any merit and the same stands dismissed with costs.

JULY 02, 2015
shalini

(K. C. PURI)
JUDGE