

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

Regular Second Appeal No.3858 of 2015 (O&M)
Date of decision: 14.08.2015

Jeet Ram and another

... Appellants

versus

Jai Kishan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vinod S. Bhardwaj, Advocate,
for the appellants.

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

K.Kannan, J. (Oral)

1. The defendants 2 and 3 are the appellants in a suit filed for an injunction by the plaintiffs claiming to be the owners of the property. The first defendant was the school and the defendants 2 and 3 were impleaded as persons interested in the affairs of the school and trying to protect the claim to the property held by the school. The plaintiff filed a suit on the basis of a deed of purchase dated 12.09.1967. The trial Court found that the vendor's right to the property had not been proved. The appellate Court in appeal reversed the finding and held that barring an extent of about 1 kanal

1 marla where the school construction has come about, the remaining portion of property stood in the name of the plaintiff as an owner and the school did not have any ownership as regards the same. The defendants still wanted to contend that the relief of injunction could not be granted particularly in view of the fact that an Advocate Commissioner, who was appointed, had found that 4 kanals 4 marlas of suit property was used as a part of playground for children studying in the school and there was a platform erected and there had been some plants grown and husbanded by the school. The court found that the whole property was vacant and the possession of the property must be taken as following the title and granted the relief of injunction. The defendants 2 and 3 are the appellants before this court to contend on behalf of the school that the plaintiffs cannot have the relief of injunction in respect of property of which they are not actually in physical possession. The counsel would reiterate the observations of the trial court, the nature of user as brought out in the Local Commissioner's report to contend that the suit was not even competent for the relief of injunction and the appellate court decree was, therefore, not sustainable.

2. To a specific query of the natural right that the school had in relation to the property, the counsel is fair to admit that the plaintiffs could be the owners but they cannot maintain an action for injunction. I must observe that the school itself is not a party in the

appeal challenging the decree that has been passed against it. Only the defendants 2 and 3 have come up on appeal and on their own showing that they are not asserting any right over the property. A government High School so established by the Government and a Naib Tehsildar, who has been impleaded as a party, exercising the powers of Assistant Collector, 2nd Grade, shall alone be competent to consider the judgment as aggrieved person. There cannot be a shadow fight setting up the defendants 2 and 3 to come up before this court and look for benefits coming through their efforts. I find the defendants 2 and 3 to be no more than busy-bodies in the village, who believe that they can fend off an action for injunction brought at the instance of owners of the property. An issue of locus standi is invariably only for the plaintiff and not to the defendants. Defendants 2 and 3 have been added as parties since they were seen as canvassing the cause of school and as defendants, they could take a common defence along with the school. In a case where the school has suffered a decree and an injunction has been granted, I will not allow for defendants 2 and 3 to pick up pleas on behalf of the school after the decree was passed. Of what was possible before the decree cannot make possible for the defendants 2 and 3 subsequently. Even taking an issue that as members of public, if they are interested in protection of the interest of the school or for the student community, that protection ought to have the sanctity of

law. There can be no public interest to canvass for the school, which through its management is a juristic person and if the school itself does not challenge the judgment, defendants 2 and 3 who have admittedly no right to the property cannot be permitted to bring an appeal. Playing in the open space or offering prayers at times are all sporadic acts and cannot secure any vested right. They shall be taken as possible so long as the owners do not object. Taking the worst case scenario against the plaintiff, if at all, the alleged acts of possession by the school could only be considered as mere licence without any transfer of interest, and the moment, the owner sets up his own claim to the property and says he is in possession and would not want any other interference, it must be assumed that the owner exercises the act of possession by the mere institution of suit, such a suit is perfectly competent. In **Maria Margarida Sequeria Fernandes and Others Versus Erasmo Jack de Sequeria(Dead) through L.Rs.-2012(5) SCC 370**, the Supreme Court held that a person holding the property gratuitously, such as a friend, relative, caretaker or a servant cannot hold his possession, the moment the true owner asserts claim to possession. The above decision will illustrate that an owner can even seek for injunction on deemed possession against a person who is but merely a licence and who is actually in possession. The school children playing or offering prayers at the place must give place to the owner's assertion of right

in respect of the vacant land.

3. I find no ground for interference. The second appeal is dismissed.

(K.KANNAN)
JUDGE

14.08.2015
sanjeev