

In the High Court of Punjab and Haryana at Chandigarh

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CM No.6201-C of 2014 and  
CM No.10560-C of 2014 and  
R.S.A. No.2629 of 2014

.....

Date of decision:8.7.2015

Pirmal Dass and others

.....Appellants

v.

Municipal Corporation, Ludhiana and others

.....Respondents

.....

**Coram : Hon'ble Mr. Justice Inderjit Singh**

.....

Present: Mr. Harsh Bunker, Advocate for the appellants.

.....

**Inderjit Singh, J.**

CM No.6201-C of 2014:

For the reasons mentioned in the civil miscellaneous application, the delay of 457 days in re-filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

CM No.10560-C of 2014:

Learned counsel prays that he may be allowed to withdraw this civil miscellaneous application filed to withdraw the suit.

The civil miscellaneous application is dismissed as withdrawn.

R.S.A. No.2629 of 2014:

This regular second appeal has been filed by Pirmal Dass, Gian

Chand and Madan Lal-appellants/plaintiffs against Municipal Corporation, Ludhiana and others challenging the impugned judgment and decree dated 28.3.2009 passed by the learned Civil Judge (Junior Division), Ludhiana, and against the impugned judgment and decree dated 4.9.2012 passed by the learned Additional District Judge, Ludhiana in the appeal.

At the time of arguments, learned counsel for the appellants argued that the findings given by the Courts below are not as per evidence and are perverse and liable to be set aside.

I have heard learned counsel for the appellants and have gone through the record.

First of all, the findings given by the Courts below are concurrent. Secondly, no substantial question of law arises in this regular second appeal. Further, from the record I find that there is nothing on the record to show as to which material evidence has been misread by the Courts below and which material evidence has not been appreciated in right perspective. There is also nothing on record to show that the judgments and decrees passed by the Courts below are perverse or against the evidence or law.

The brief facts of the case are that Pirmal Dass etc. 46 plaintiffs filed the suit against the Municipal Corporation, Ludhiana, Punjab State, the Collector, Ludhiana, the District Development & Panchayat Officer, Ludhiana, the Sub Divisional Magistrate-cum-Assistant Collector, Ludhiana (West) and the Tehsildar, Ludhiana (West)-defendants for declaration to the effect that the plaintiffs are owners in possession of twenty nine residential

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houses measuring five marlas each and twenty nine 'Garhas' measuring three 'karam' x two 'karams' each as detailed in the plaint and suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiffs in the said properties and for further restraining the defendants from dispossessing the plaintiffs illegally and forcibly from the said property.

As per the case of the plaintiffs, they were allotted plots measuring 5 Marlas each for constructing the residential houses as at that time all the said allottees were landless residents of Village Haibowal Kalan. Since then original allottees are in possession of the said plots and Garhas allotted to them. With the passage of time, the plaintiffs either inherited the plots and Garhas or some of the present plaintiffs purchased the plots, residential houses and Garhas from the original allottees. All the plaintiffs are now in possession of the houses and Garhas. With the passage of time, area of Village Haibowal Kalan fell within the limits of Municipal Corporation, Ludhiana. Since the date of allotment, original allottees have sold their dwelling houses to some of the present plaintiffs. Mutation No.309 was also entered in the name of original allottees on the basis of order passed by Director, Consolidation, Punjab on 26.8.1959. But, as mutation cannot be sanctioned due to one or the other reason, so, the ownership of the suit property got vested in Municipal Corporation, Ludhiana. Plots were allotted to landless persons from the panchayat land much prior to vesting of the property of Panchayat into Municipal Corporation, Ludhiana.

On the other hand, the case of defendant No.1 is that the plaintiffs were never allotted any plots being landless people at the time of consolidation of Village Haibowal. They have no right or title over the disputed property. They have failed to produce any allotment letters allegedly issued to them. Entire construction and the possession of the plaintiffs over the suit property is illegal and amounts to encroachment of the land owned by the Government and Municipal Corporation, Ludhiana. It is also stated that the defendants are not threatening as alleged. Rather, they are removing the encroachments as alleged from the suit property and complying with the directions given by the Hon'ble High Court in Civil Writ Petition No.4886 of 2003.

The learned Civil Judge (Junior Division), Ludhiana, after discussing evidence reached to the conclusion that none of the plaintiffs has come to the witness box. No resolution of the Gram Panchayat has been placed. There is no document produced by the plaintiffs regarding any allotment of land to them. The witnesses produced by the plaintiffs PW-1 Jaswant Singh, PW-2 Rajinder Singh and PW-3 Gurdeep Singh during their cross-examination admitted that the plaintiffs are not the owners of the disputed property as the suit property is owned by Municipal Corporation, Ludhiana. Thus, all the plaintiffs' witnesses had also admitted that the plaintiffs are in illegal possession of the property owned by Municipal Corporation, Ludhiana. The learned Additional District Judge, Ludhiana, in appeal has also discussed as per the revenue record and found that the suit property is owned by Municipal Corporation, Ludhiana. Even if the

plaintiffs are presumed to be in possession of the suit property, they cannot claim injunction on the basis of unlawful occupation of the public property. The learned Additional District Judge, Ludhiana, in appeal also found that there is not even a single document produced on record which could show that the suit property was ever allotted to the plaintiffs or their predecessors-in-interest. The findings given by the Courts below are correct and as per law. The plaintiffs, in no way, can be held as owners of the suit property. None of the plaintiffs have appeared in the witness box.

Learned counsel for the appellants/plaintiffs placed reliance on the judgment of the Hon'ble Supreme Court in Prataprai N. Kothari v. John Braganza, 1999(3) RCR (Civil) 119. I have gone through the law laid down in this judgment. This citation having distinguished facts will not apply in the present case as this judgment is for interim stay. Otherwise also, this citation is against the plaintiffs as it is held in this judgment that a person, who has been in long continuous possession can protect the same by seeking injunction against any person in the world other than the true owner. Even the owner of property can get back his possession only by resorting to due process of law.

Learned counsel for the appellants also argued that the plaintiffs are owners by way of adverse possession. On this argument, I find that first of all the plaintiffs cannot ask for declaration on the basis of adverse possession. It is a defence which may be taken in the written statement. Secondly, the plea taken by the plaintiffs is contradictory as they are not admitting Municipal Corporation as owner. Therefore, the question

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of adverse possession does not arise. As per the case of the plaintiffs they are asking for declaration that they are owners in possession on the basis of allotment of these plots by the Gram Panchayat. Therefore, this argument of the learned counsel for the appellants also has no merit.

In view of the above discussion, I find that the findings given by the Courts below are correct and as per law which do not require any interference from this Court and the same are upheld. No substantial question of law arises in this regular second appeal.

Finding no merit in the regular second appeal, the same is dismissed.

July 8, 2015.

**(Inderjit Singh)**  
**Judge**

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