IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No.559 of 2015 (O&M)
Date of decision: 18.3.2015

M/s United Lime Industries, Patiala

... Appellant

Versus

Administrator, Improvement Trust, Patiala and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.S.D.Sharma, Sr.Advocate with
Ms.Bindu Goel, Advocate
for the appellant.

Mr.G.S.Attariwala, Advocate,
for the Caveator-respondent.

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1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

Heard Mr.S.D.Sharma, learned senior counsel and Mr.G.S.Attariwala, learned counsel for the caveator-respondent. The matter is taken on Board for final disposal.

2. This is an appeal against the concurrent decrees against the judgment and decree of the learned Civil Judge (Senior Division), Patiala dated 12.2.2014 as affirmed by the learned Additional District Judge, Patiala on 2.2.2015 whereby the plaintiff-appellant's suit for declaration with consequential relief of permanent injunction has been dismissed.

3. The moot question raised in second appeal is whether the appellant was successful in proving his possession over the suit land prior to the year 1990 where there are presently buildings and structures from where he works for gain. The documents relied upon to prove possession but not title, are in the nature of record in the Sales Tax Register showing the plaintiff as a sale tax assessee since 1984; copy of DDR No.31 of 9th July, 1988 in proof of carrying on business in the demises premises. Indisputably, the defendant Improvement Trust, Patiala took vacant possession of the suit land vide rapat dated 25th June, 1990, Ex.D5 consequent upon acquisition of the land and other land for a town improvement scheme meant for public housing. It was pleaded by the plaintiff that this document taking possession was only a paper transaction and actual physical possession was not taken of corpus property which still vests in the plaintiff.

4. The introductory facts, as pleaded by the plaintiff, are that initially the plaintiff's father Krishan Chand was the sole proprietor of a firm which had taken a shop against rent @ ₹ 3,000/- per year from Ram Gopal son of Babu Ram. The plaintiff pleads that in the year 1982, he joined his father in business which was carried out from the suit property. The oral evidence adduced by the plaintiff in support of his case for a decree before the trial Court was introduced through one of his summoned witnesses Khushwant Raj PW4, a Clerk in the Sales Tax Department, Patiala who proved the registration certificate issued by the Sales Tax authorities in May, 1984 in his favour, the validity of which commenced from 29th March, 1984. The other witness Rajinder Pal PW5 was a bank official who proved that the loan was taken by the appellant in the year 1985 against the suit property.

The nature of the business activity was a lime *bhathi*. The loan was advanced by the bank. The photographs of site were produced through Rajinder Singh PW6, Photographer who testified photographs Ex.P46 to Ex.P51 from where the plaintiff presses possession since 1988 as also in the year 1993 when major floods had entered the premises and damaged the suit property. A DDR was recorded in connection with the floods with the police authorities.

5. The Improvement Trust while contesting the case produced Narinder Singh DW1 as its sole witness who was cross examined in the witness box by the plaintiff. In all, 54 exhibited documents are pressed by Mr Sharma, the learned senior counsel in appeal to prove long settled possession of the appellant over the suit property. It is urged that these documents have been misread and the Courts below have been swayed by the fact that on 8th June, 1990, the possession of the property was taken by the Trust which amounted to nothing but a mere paper transaction and the actual physical possession of corpus continued with the plaintiff. It is not in doubt that the suit property has been acquired by the Improvement Trust for a scheme but it is argued that actual physical possession not having been taken, the Collector, Land Acquisition has become *functus officio* and is no longer entitled to regain possession of the corpus. If the appellant presently is dubbed to be in unauthorized possession of suit property then the only lawful way to regain possession by the Trust would be through an action brought under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. In these circumstances, it is argued that the benefit of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement Act, 2013 should go to the appellant. The acquisition has lapsed in terms of Section 24(2) of the said Act.

6. It is argued by the Improvement Trust that it proposes to acquire the land including the corpus and in the year 1973 by issuing a notification under Section 36 of the Punjab Town Improvement Act, 1922 corresponding to Section 4 of the Land Acquisition Act, 1894 which was published on 21st December, 1973. The objections were called from the persons interested but the plaintiff did not file any objection which suggests that they were not in possession of the suit property and they were not persons interested. Thereafter, notice under Section 38 of the Act was issued to Suraj Bhan owner in possession of the suit property and, thereafter, a final award was made by the Collector, Land Acquisition on 28th July, 1998. This is how the Improvement Trust has become owner of the suit property and, therefore, the Collector is competent to take possession free from all encumbrances of the disputed property of which it had taken possession in 1990 by an appropriate entry made in the Khasra Girdawari in the year 1990-91 in the name of the Trust. Jamabandis to support the assertion are on record. The revenue record does not reveal that the name of the plaintiff is mentioned at any point of time. Besides, Suraj Bhan was aggrieved by the acquisition and filed a writ petition in this Court where parties are directed to maintain status quo regarding possession. The petition was admitted and the status of the land remained under interim orders. The Trust pleads that in this state of affairs, the plaintiff-appellant took forcible possession of the land in 1990 and this was intimated by the original owners to the Chairman, Improvement Trust, Patiala. The land owners challenged the acquisition

upto the Supreme Court whereafter on failure, the writ petition was dismissed and the Improvement Trust were held entitled to develop the scheme as framed and implemented by the Improvement Trust, Patiala. On merits, it was pleaded that the alleged construction on the site in dispute was never raised in 1970 and in fact, encroachments on suit property were made in 1990 and no evidence was placed on record to show that the plaintiff came into possession since 1970.

Parties went to trial on the following issues : -

1. Whether the plaintiff is entitled for decree of declaration to the effect that threatened action of defendants to dispossess the plaintiff from the property fully detailed in the head note of the plaint is illegal, null and void, arbitrary and without jurisdiction? OPP.
2. Whether the plaintiff is entitled for decree of permanent injunction against the defendants restraining them from dispossessing the plaintiff from demolishing the construction of building over the suit property detailed I in the head note of the plaint? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is bad for non-joinder of necessary parties? OPD
5. Whether the plaintiff has taken forcible possession and encroached upon the land and is not entitled for any relief?
6. Whether the plaintiff has not come to the Court with clean hands and the suit is barred by principles of resjudicata? OPD
7. Relief.

7. It may be mentioned that the present appellant Rakesh Kumar had instituted a suit on 17.7.2009 in the civil court for permanent injunction against the Improvement Trust, Patiala but withdrew the same by pleading a

formal and technical defect in the frame of the suit where relief of declaration in addition to permanent injunction was not made which led to an application the very next day for withdrawal of the suit with permission to return. The application was accepted and the suit was allowed to be withdrawn with permission to file a fresh one which opportunity was utilized. Learned trial Court examined all the 54 documents on issues No.1 and 2 and the numerous documents placed by the defendants on the file and after appreciating them arrived at the conclusion that the plaintiff had failed to produce any document in the array of evidence adduced to prove that he was ever inducted as a tenant by Suraj Bhan and other land owners. Neither has the plaintiff produced any account books nor income tax return to prove that rent was paid by him to Suraj Bhan and others and, therefore, the plaintiff had failed to discharge the burden and onus placed on issues No.1 and 2 on him by leading any cogent and convincing evidence in support of his relief claimed. Resultantly, the issues were decided against the plaintiff and in favour of the defendants and it was held by the courts *a quo* that the plaintiff was not entitled to the relief for declaration as well as for permanent injunction as claimed in the suit. In view of the findings on issues No.1 and 2, issues No.3 and 6 were peripheral and came to be decided against the plaintiff holding that the suit was not maintainable.

8. Besides, after the first suit was withdrawn to file a fresh one, the learned trial Court noted that the name of the plaintiff was substituted from Rakesh Kumar to M/s United Lime Industries, Patiala and the Chairman of the Trust and the Trust itself were arrayed as defendants No.1 and 2 and therefore the suit was barred by the principles of *res judicata*, for

the reason that the names of the parties had been drastically changed for which no permission was sought nor given. Issue No.4 was decided in favour of the Trust and it was held that the Collector is competent to take possession of the encumbered notified property through the Collector, Land Acquisition but the Collector has not been made a party defendant and property having vested in the State, the Collector was a necessary party and his non-joinder was fatal to the action. On issue No.5, a specific finding has been returned by the trial Court from the perusal of Ex.D17 to Ex.D19 that it stood proved that the original owners put the Chairman, Improvement Trust, Patiala to notice of forcible and illegal possession taken by the plaintiff in 1990. In the face of this finding, the trial Court committed no error in holding that the plaintiff took forcible possession and encroached upon the suit land. If he made construction thereon it was at his own peril. Lastly, it is submitted by Mr.G.S.Attariwala learned counsel appearing for the Trust that compensation for acquisition of land has been paid to the original owners when the land was acquired and the writ petition challenging the acquisition stands dismissed by this Court attaching finality to the acquisition proceedings with compensation paid to land owners whereafter the suit did not lie just as a writ petition would not after awards are made. For these reasons, Civil Judge (Senior Division), Patiala dismissed the suit.

9. Feeling aggrieved by the judgment and decree of the learned trial Court, the plaintiff-appellant preferred an appeal No.35 of 18.2.2014 which has been dismissed on 2nd February, 2015. The lower Appellate Court has affirmed the opinion of the trial Court that the property was not rented

by the appellant from the original owner Suraj Bhan. There was neither a rent note nor proof of rent paid by the plaintiff or his father to the original owner at any stage. None of the original owner has been examined to prove that the plaintiff or his father had been occupying the property in question as a tenant. Mere production of Hans Raj and Jiwan Kumar as PW2 and PW3, for recording of their statements is not enough to prove from their oral testimonies that the plaintiff-appellant was running his business in the disputed property prior to the year 1990. Besides, the certificate issued by the Punjab State Electricity Board Ex.P2 proving that the electric connection stood in the name of the plaintiff is after December, 1990 only. The telephone bills produced by the plaintiff are of the year 2009. The 54 documents which have been vehemently pressed by Mr.S.D.Sharma learned senior counsel appearing for the appellant are post 1990 and do not come to his client's help. More surprisingly, the registration certificate issued under VAT Act and the registration certificate under the Central Sales Tax Act are of 2004 and 2009 respectively. More minutely, the learned Additional District Judge, Patiala has read Exb. P43 which is an entry in the register of the Sales Tax Department showing that M/s United Lime Industries, Rajpura Road, Patiala was registered with the Department in the year 1984 but the complete address is not mentioned therein and, therefore, the document cannot be connected with the property in question. There was no evidence on record to prove that the father of the plaintiff had taken the property on rent in the year 1970 as alleged. What remains to be looked into is a copy of the DDR No.31 dated 9th July, 1988 Ex.P3 which could not be proved from the record of the Police Department as MHC Suba Singh made a statement in court that the record prior to 1988 had been destroyed in foods which devastated Patiala in the year 1993. The Courts below placed no faith on the DDR to help prove that the plaintiff was in possession of the property at any time preceding the year 1990.

10. On the other hand, the defendant Trust produced the report dated 8th June, 1990 Ex.D5 whereby the Land Acquisition Collector had delivered the possession of the property in question to the Trust for implementation of its Scheme. If the plaintiff was neither a tenant nor in lawful possession of the land in dispute at any time earlier to the year 1990, he would had no actionable right to challenge the correctness of the report evidencing taking over possession by the Improvement Trust in furtherance of the scheme. The plaintiff was unable to prove that the report was a mere paper transaction and even if he did that would not give him any right to retain possession.

11. It is settled law that no injunction could be granted against the true owner at the instance of the persons in unlawful possession. The three basic ingredients which are to be satisfied for grant of injunction in favour of the plaintiff have not coincided, namely a strong *prima facie*, the balance of convenience and irreparable injury likely to be caused which cannot be compensated in terms of money and in the cases involving pubic properties and public trust. The Courts have to bear in mind as to whether the grant of injunction would be conducive or detrimental to public interest. Government lands belong to the public at large and the community as a whole who are entitled to enjoy the properties belonging to the Government when open for common use by prescription. In fact, the Government holds

the properties as a trustee of the people in general; the Courts then have to be extremely cautious in granting injunctions in favour of such persons only on the ground that they are in possession of the property. Possession of public property by such an individual or a group of individuals is no possession in the eyes of law. Such person cannot claim any right whatsoever on the basis of unlawful occupation of public property and the Courts would be justified in declining any assistance to such a person. For this proposition, the learned lower Appellate Court correctly applied the decision of this Court in re. **Mohan Lal** v. **Mohan Singh** 1996 (1) CCC 30 and **Chuni Lal** v. **State of Haryana,** 2004 (1) CCC 586.

12. The argument of Mr. Sharma that the appellant deserves protection on account of long settled possession or that he could only be dispossessed by resort to the Public Premises Act is not worthy of acceptance as no grounds have been made out in the suit to claim either of these reliefs.

13. For the foregoing reasons, the concurrent findings of fact recorded by the courts below are not open to be disturbed in second appeal as no substantial questions of law as proposed in the grounds of appeal or urged at the hearing are made out meriting admission of the appeal. Therefore, the appeal is found sans merit and is consequently dismissed for the reasons recorded.

(RAJIV NARAIN RAINA)
JUDGE

March 18, 2015
Paritosh Kumar