IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.5591 of 2014 (O & M)
Date of Decision: *November 02, 2015*

Municipal Council, Narnaul & another

..... APPELLANTS

VERSUS

Dalip Singh & others

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

. . .

PRESENT: - Mr. Rajesh Kumar, Advocate, for the appellants.

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Jaspal Singh, J

1. The instant appeal has been preferred by defendants challenging judgment and decree dated February 21, 2012 by passed by the trial court as well as judgment & decree dated July 5, 2014 passed by the lower appellate court, whereby the findings recorded by the trial court have been upheld and appeal filed by the defendant against the judgment & decree passed by the trial court has been dismissed. Accordingly, the suit filed by plaintiffs seeking permanent injunction restraining the defendants from interfering in their possession as tenants over the Kiosks (Khokhas), (shown in red colour, marked as letters A & B in the site plan annexed with the plaint) and from ousting them, forcibly and illegally, has been decreed.

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has been decreed.

2. While assailing the impugned judgments & decrees passed by both the courts below, it has been ebulliently argued by learned counsel for the appellants that the same are absolutely against the evidence available on record and settled canons of law. Mis-appreciation of the legal proposition has resulted into mis-carriage of justice. Infact, the plaintiffs have illegally and unauthorizedly encroached upon the public property by placing Kiosks on the part of *sare-aam* passage which is comprised in Khasra No.1116/1. All public property vests in the Municipal Council, Narnaul. Moreover, so far as ownership of Municipal Council is concerned, that stands proved from the copy of jamabandi for the year 1989-90 (Ex.D1). A perusal of the aforesaid jamabandi makes it crystal clear that Municipal Council, Narnaul is owner of the property in suit and the nature of property as recorded in column No.5 is *sare-aam*. Thus, appellant – Municipal Council, Narnaul has every right to get the encroachment removed from the disputed property.

3. Learned counsel for the appellants further contended that tress-passers, otherwise, are not entitled to an equitable relief of injunction against the true owner. Thus, Municipal Council has every right to remove the illegal construction raised by the plaintiffs – respondents without its prior permission and sanction. To buttress this contention, learned counsel has relied upon the pronouncement captioned as Municipal Council, Narnaul vs. Mahabir Parshad, *1998(1) RCR (Civil) 599*.

4. This court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellants but find the same to be of no legal substance.

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5. From the evidence brought on record by the plaintiffs – respondents, it clearly emerges that they are in established possession of the property in suit for the last more than 25 years and are running Kiosks. Apart from the evidence brought on record by the plaintiffs, there is also an admission on the part of the Municipal Council, Narnaul with regard to possession of the plaintiffs over the property in suit. Admittedly, the Municipal Council has issued a notice to the plaintiffs – respondents whereby a demand has been put-forth for payment of the house tax. Besides it, the Kiosks have also been allotted to the plaintiffs by the Municipal Council, Narnaul. As per the documentary evidence available on file, house tax pertaining to Kiosk No.115 stands allotted to respondent No.2 whereas Babu Lal, father of respondent No.1 has been allotted house tax No.116.

6. As far as, ownership of the property in dispute is concerned that stands proved to be ownership of Municipal Council, Narnaul from the copy of jamabandi for the year 1989-90 (Ex.D1) whereas the possession over the disputed property stands proved to be that of plaintiffs – respondents. Undeniably, the appellants – defendants have not so far issued any notice under Sections 208, 209 or under Section 181 of the Haryana Municipal Act, 1973 asking the plaintiffs – respondents to hand over the vacant possession of the property in suit, they being in unauthorized occupation thereof. By now, it is well settled by catena of cases that a person who is in established possession of the property in suit can only be dispossessed in accordance with law and the owner of the property cannot be permitted to take the law into its own hands to the detriment of the person(s) in unauthorized occupation. Even the Hon'ble Apex Court in case Megha & others vs. G. Narsiham Reddy & others, *2011(3) CCC 6 (SC)* has held that

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even a person in illegal occupation can be ejected by following due process of law.

7. Adverting to the facts of the case in hand, plaintiffs – respondents are proved to be in continuous possession over the property in suit who are running Kiosks and earning their livelihood for the last many years. Thus, they cannot be evicted or ejected by use of force, however, the Municipal Council would be at liberty to take the possession and to get the unauthorized occupation removed by resorting to the due process of law provided under the Municipal Act. So, in view of the above narrated facts and discussion, this Court is of the considered view that judgments & decrees rendered by both the courts below are absolutely in consonance with the evidence available on file as well as legal proposition. The instant appeal being devoid of merits is dismissed. However, parties are left to bear their own costs.

(Jaspal Singh)
Judge

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