

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.81 of 2014 (O&M)
Date of Decision.13.08.2015

Ram Kishan

.....Appellant

Versus

Bishan Dass and others

.....Respondents

Present: None for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The appeal which has been filed in the year 2013 is brought for hearing after several rounds of adjournment sought at the instance of the appellant. Now, there is no presence of the counsel but there is a written request for adjournment. I decline to grant an adjournment noting the fact that the appellant has been a persistent defaulter and was only interesting having the case adjourned from time to time.

2. The matter relating to examination of whether there is substantial question of law for consideration is essentially a duty of the Court and I, therefore, proceed to examine the case and dispose of the appeal on merits.

3. The appeal is at the instance of the plaintiff who filed the suit for permanent injunction that the property is classified as *shamlat deh* where rain water and sludge water collected and the defendants were trying to enter upon the property and put up construction. The

contention was that the plaintiff was also amongst the proprietors of the village and the defendants could not have any construction made which was against the interest of the plaintiff. The trial Court found that the property was shamlat deh and the defendants were contending the property to be their own. The issue of whether the property was village common land or not would be within the exclusive jurisdiction of the revenue authorities under the Punjab Village Common Lands Act and the suit was not competent. The Court also found that the plaintiff had not established any particular prejudice to him and the relief of injunction could not, therefore, be granted, more so, in the absence of the village panchayat being made party in suit.

4. In appeal, the plaintiff contended by referring to case law on the subject that if there is nuisance committed on a common property, it is not essential to implead the public authority and any member of the public may sue to prevent any nuisance being committed by any other member of the public. The Court below, however, did not examine the legal position but went on to observe that the plaintiff himself admitted in the cross-examination that he was neither the owner nor a person in possession of property and he will not be in a position to show how the plaintiff was prejudiced by any action on the part of the defendant. The Court, therefore, found that the plaintiff cannot show his own ownership over the property or any prejudice as caused to him. It held that there was no relief of injunction which was possible.

5. I would find the approach of the lower Appellate Court to be appropriate but only to take up one particular legal submission which

was brought before the lower Appellate Court but was not specifically considered was whether the member of the public could sue for injunction in respect of a public property even without making a public authority as party against any other member of public. The exception for any person to treat himself as aggrieved to take action is for commission of nuisance in the property. The law is that no special damage is required to be proved and it is possible for a person to take action as member of the public complaining of nuisance. On the other hand, there is not even an averment of nuisance anywhere in the plaint and the injunction was sought only on the assumed basis that the defendant cannot be permitted to do some act on a public property without taking exclusive permission from such authority.

6. I do not find that there is any cause for making any interference. The second appeal is dismissed on merits finding no substantial question of law for consideration.

(K. KANNAN)
JUDGE

August 13, 2015
Pankaj*