

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

RSA No.1339 of 1990 (O&M)

Date of decision: 22.08.2016

Municipal Committee, Moga and another

... Appellants

Vs.

Sodagar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. G.S.Bhatia, Advocate
for the appellant.

Mr. S.C.Chhabra, Advocate
for the applicant in C.M.No.1-C of 2015.

Mr. J.S.Toor, Advocate
for the respondent – M.C.Moga.

Mr. Rahul Sharma, Advocate
for respondent No.1

AMIT RAWAL J.

C.M.No.1-C of 2015

The application is allowed, subject to all just exceptions. Legal representatives of Sh. Ujaggar Singh (deceased) respondent No.2, as mentioned in the application, are ordered to be brought on record for the purpose of prosecuting the present appeal.

Amended memo of parties is taken on record.

RSA No.1339 of 1990 (O&M)

Appellant-defendants are aggrieved of the judgment and decree

dated 29.01.1990, whereby, judgment and decree of the trial Court has been reversed.

Mr. G.S.Bhatia, learned counsel appearing on behalf of the appellant-defendants submitted that the finding rendered by the Lower Appellate Court while setting aside the judgment and decree of the trial Court is erroneous and perverse, for, the trial Court after examination of the documentary evidence rightly formed an opinion that it is public property and had vested in the Municipal Committee and therefore, possession of Kehar Singh was un-authorised.

The Lower Appellate Court has misread and misinterpreted the evidence available on record as the witness produced by the plaintiff, i.e., Halqua Patwari – PW12 clearly stated that the land in dispute is situated on G.T. Road, Moga and no crop was ever sown and this fact is clarified from jamabandi for the year 1969-70, thus, question of possession of Kehar Singh did not arise at all, yet the Lower Appellate Court gave a different version than the one given by the trial Court which is, thus, not sustainable in the eyes of law. The Lower Appellate Court has again misinterpreted and misread the document Ex.D14 which shows that the land was *Shamlat Deh* and had come within the Municipal Limits, thus, there was an automatic vesting. Even the entry of mutation was also sanctioned in favour of Municipal Committee on 23.12.1976 and the same was reflected in the jamabandi for the year 1977-78, Ex.D2. The respondent-plaintiffs have failed to prove on record any document to show that they were in possession of the land in dispute. The statement of Ujjagar Singh - PW3, Jagir Singh-

PW4 are self serving statement not supported by any document. As per khasra girdawari - Ex.P7, name of the cultivator has been shown as Kehar Singh but whereas, in the other columns, it is shown as 'gair mumkin abadi'. Under what circumstances, Kehar Singh was in possession, had gone unexplained.

Per contra, Mr.S.C.Chhabra, learned counsel appearing on behalf of respondents submitted that the findings rendered by the Lower Appellate Court are based upon pre-ponderance of the entire evidence brought on record and held that the land was never vested in the Panchayat and question of vesting in Municipal Committee did not arise. He further submitted that as per the resolution placed on record, there is no mention of earth filling on the disputed land which bears khasra no.72/31. In fact, area in possession of the plaintiffs was found to be in possession of their predecessor-in-interest, namely Kehar Singh as it was being used for '*Pir*'. As per copy of khasra girdawari Ex.P8, which is after consolidation proceedings, it has been shown that area in khasra numbers of the disputed land have been changed and khasra number 72/31 was carved out in the consolidation proceedings in place of khasra number 1875. No doubt, the property in dispute had been recorded as ownership of '*Shamlat Deh Hasab Rasad Zar Khewat*' and the aforementioned entries in khasra girdawaris from 1962 to 1980 continued to be recorded in the name of Kehar Singh. He further submitted that as per copy of khasra girdawari, Ex.P10, mutation regarding ownership of the property in dispute was sanctioned in favour of Municipal Committee and the said entry was not found to be correct as per

the findings rendered by the Lower Appellate Court. Even after change of ownership, Kehar Singh continued to be recorded in ownership and the Municipal Committee has failed to prove on record the date, year and period, much less, to show that when the possession was taken from Kehar Singh and his successor-in-interest. From the statement of DW3 – Executive Officer of Municipal Committee, it has surfaced that possession of the disputed land had not been taken, much less, even the land was never acquired and therefore, held that property was in the ownership of the proprietors and thus, there was no question of vesting in the Municipal Committee.

I have heard learned counsel for the parties and appraised the judgments and decrees of the Courts below.

In the instant case, I am of the view that respondent-plaintiffs cannot attain the declaration of ownership, once it is conceded position on record that land was being used for common purposes. Even if the village did not have any Gram Panchayat, the land can always vest in the Municipal Limits but subject to the condition that in case, the land is being used for the welfare of the village but if otherwise then remedy, if any, for the Council is first to compensate the proprietors. The nomenclature itself shows that the proprietors had voluntarily kept the land for common purposes.

I am in agreement with the submissions of Mr. Chhabra and Mr.Jain in other Regular Second Appeal that Municipal Committee cannot claim the ownership of land by extension of Municipal Limits, the property

would vest in them. The Municipal Committee cannot assume the ownership as it would be blatant violation of provisions of Article 300-A of the Constitution of India. If at all, they have to use it for the development of area other than for welfare of the village, the proprietors are required to be compensated in accordance with law. This aspect has not been noticed by the Lower Appellate Court while decreeing the suit. Once the land had been found to be '*gair mumkin*', the question of cultivation does not arise at all and there would be no probability in favour of the plaintiffs that their predecessor-in-interest was in possession of the property.

No doubt that this Court on earlier occasions had been framing the substantial questions of law while allowing the appeal but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in ***Civil Appeal No.201 of 2005 titled as Pankajakshi (dead) through LRs and others vs. Chandrika and others, decided on 25.02.2016***, wherein, the proposition arose as to whether in view of the provisions of Section 97 of Code of Civil Procedure, whether the application of provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal, i.e., RSA would be filed under Section 100 of Code of Civil Procedure and the Five Bench of Hon'ble Supreme Court held that *Pankajakshi (supra)* decision on applicability of Section 97(1) of Code of Civil Procedure was not correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back, and therefore, I do not intend to frame the substantial questions of law while allowing the appeal aforementioned.

Accordingly, in view of the findings and observations, the appeal stands allowed.

August 22, 2016

savita

(AMIT RAWAL)
JUDGE

Wheather speaking/reasoned	Yes/No
Whether Reportable	Yes/No