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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3886-2009 (O&M)
Date of decision : 03.08.2016

Prithvi Pal Singh

... Appellant

Versus

Gram Panchayat Village Butari

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjiv Gupta, Advocate
for the appellant.

Mr. A.D.S. Sukhija, Advocate
for the respondent.

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?

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent findings of fact, whereby the claim for permanent injunction on the basis of the long and settled possession has been declined.

Mr. Sanjiv Gupta, learned counsel appearing on behalf of the appellant-plaintiff submits that the appellant-plaintiff had been put into possession by the erstwhile settlers by virtue of agreement to sell. Dehors of fact that they were not having any title, but the revenue record i.e. Jamabandi for the year 1966-67 (Ex.PX) showed the settled possession of the appellant-plaintiff. The respondent-Gram Panchayat initiated the ejectment proceedings against the aforementioned person, but the same

resulted into dismissal. Once, the appellant-plaintiff had been able to prove the long and settled possession, he cannot be forcibly dispossessed except in due course of law. In support of his contentions, he relies upon the judgment of Hon'ble Supreme Court in **“Rame Gowda V/s Mr. Varadappa Naidu (dead) by LRs and another”, 2004(1) SCC 769.** He further submits that even as per the latest jamabandi for the year 2000-01, the possession is in of his father. Nothing prevented Gram Panchayat to initiate the auction proceedings in accordance with law, thus, urges this Court for formulation of the following substantial question of law as arises for determination.

Whether a person who is found to be in long and settled possession, can be forcibly dispossessed except in due course of law or not?

Mr. A.D.S. Sukhija, learned counsel appearing on behalf of the respondent-Gram Panchayat submits that except the stray entry in the jamabandi owing to the status qua order passed by the lower Appellate Court, there was no other revenue record to show the possession. Once, the erstwhile so called the vendors of appellant-plaintiff were not having any title, they could not have entered into agreement. The appellant-plaintiff has miserably failed to prove the possession and rightly so, the Courts below declined the relief and the concurrent of findings cannot be interfered until and unless there is a grave illegality and perversity or any substantial question of law arises for determination. He further submits that as per the record of the Gram Panchayat, the property was put to auction and the auctioneer had been put into possession, thus, prays for affirming the

findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book. The principle with regard to the forcible dispossession against the owner has been laid down by the Hon'ble Supreme Court in “Rame Gowda's case (supra). It is now a settled law that a person who is in long and settled possession, cannot be dispossessed except in due course of law. The jamabandi (Ex.PX) shows that so called the vendors of appellant-plaintiff were in possession. The appellant-plaintiff is claiming possession by virtue of the agreement to sell which does not confer title, but the fact remains that possession is reflected. Even the subsequent jamabandi for the year 2000-01 which has been passed to this Court during the course of argument by Mr. Sanjiv Gupta, shows that the father of the vendor was in possession. It is a conceded position on record that the Gram Panchayat initiated the ejectment proceedings against the so called vendors of the appellant-plaintiff and lost the litigation owing to the long and settled possession there. All this proves that possession continues with the unauthorized person including the plaintiff. As regards the auction, no documentary evidence has been placed on record to show that the auctioneer had actually been put into possession. The remedy, if any, for Gram Panchayat is to take the possession in accordance with law, but not by forcible interference and dispossession.

For the foregoing reasons, the judgment and decree rendered by both the Courts below are not sustainable and the same are hereby set aside. The suit of the appellant-plaintiff is decreed. The substantial question of law as noticed above is answered in favour of the appellant-plaintiff and

against the respondent-Gram Panchayat. The respondent-Gram Panchayat are restrained from interfering into the peaceful possession and forcible and illegal dispossession of the appellant-plaintiff except in due course of law, in essence, the respondent-Gram Panchayat is not precluded from taking the possession in accordance with law.

Appeal stands allowed.

Decree sheet be prepared.

03.08.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No