

Regular Second Appeal No.3275 of 2011 (O&M) { 1 }

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3275 of 2011 (O&M)

Date of Decision: July 08, 2016

Ginder

...Appellant

Versus

Market Committee, Jakhal, District Fatehabad & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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.Ashok Verma, Advocate,
for the appellant.

None for respondent No.1

Mr.Deepak Girotra, Advocate,
for respondent Nos.2 to 4.

AMIT RAWAL, J.

CM No.13163-C of 2014

Prayer in the application is for bringing on record the L.Rs
of appellant Ginder.

For the reasons mentioned in the application, the persons
mentioned in para No.2 of the application are impleaded as L.Rs of
appellant for the purpose of prosecuting this appeal only.

CM stands allowed.

R.S.A.No.3275 of 2011

The appellant is aggrieved of the concurrent findings of facts and law, whereby the claim in the suit seeking injunction for restraining the defendant from dispossessing the plaintiff from the plot/house in dispute except in due course of law, has been declined.

Mr.Ashok Kumar Verma, learned counsel for the appellant submits that the plaintiff had constructed a house on Khasra No.92/119 about thirty years ago and he is continuous owner of the same. The possession of the plaintiff had been proved through the demarcation report dated 21.1.1995. The land belongs to the Gram Panchayat. In the year 2006, Market Committee, Shakarpura started interfering into the possession, which necessitated the plaintiff to file the suit. In the written statement, the defendant-Municipal Committee had taken up a stand that they had taken the land in dispute on lease from the Gram Panchayat in the year 2008. The possession of the plaintiff is long and settled and has been proved through the demarcation report, aforementioned, which has been proved in accordance with law as Ex.P3. Electricity bill and ration card, Ex.P4 and Ex.P5 have also been proved, thus, relies upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Rame Gowda (D)**

by Lrs Versus Mr.Varadappa Naidu (D) by Lrs. And Anr., 2004(1)

R.C.R. (Civil) 519.

Mr. Deepak Girotra, learned counsel for respondent Nos.2 to 4 submits that both the Courts below have rendered the concurrent findings of facts finding the possession of the plaintiff being unauthorised and, therefore, rightly so, injunction has been declined and no injunction can be granted against a trespasser. It is an admitted fact that the Market Committee is not the owner of the property, but the land had been taken on lease as per mutation Ex.D3 and, thus, prays for dismissal of the appeal as no substantial question of law arises for determination by this Court.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the appeal raises the following substantial question of law:-

- 1) Whether a person, who is in long and settled possession of the property, can be dispossessed except in due course of law?

In the instant case, demarcation report Ex.P3 dated 21.1.1995 established the possession of the plaintiff over the land belonged to the Gram Panchayat. Admittedly, the Gram Panchayat had, vide mutation Ex.D3, leased out the land to the Market Committee, Shakarpura, thus, they have a right to dispossess the plaintiff, except in

due course of law. If any proceedings for ejectment have been taken, they will take the summary course and not in the manner and mode adopted and the plaintiff cannot be dispossessed forcibly, much less his possession cannot be interfered. I am quantified by the ratio decidendi culled out by the Hon'ble Supreme Court in **Rame Gowda's case** (supra), where it has been held that where a person is found to be in long and settled possession, he cannot be dispossessed except in due course of law. These aspects have not been noticed by both the Courts below. Once the plaintiff has established his long and settled possession, injunction ought to have been granted.

For the foregoing reasons, the judgments and decrees of both the Courts below are hereby set-aside. Suit of the plaintiff stands decreed and injunction is granted not to interfere in the peaceful possession, much less cause interference, except in due course of law. This decree shall not preclude the owner of the property to seek the possession in accordance with law. Accordingly, the question of law, noticed above, is answered in favour of the plaintiff and against the respondent.

Appeal stands allowed.

July 08, 2016
ramesh

(AMIT RAWAL)
JUDGE