

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**R.S.A No.3361 of 2013(O&M)
Date of decision :30.11.2016**

Dinesh Kumar

..... Appellant

Versus

Municipal Council, Palwal and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. K.P.Singh, Advocate
for the appellant.

DARSHAN SINGH,J

CM No. 8724-C of 2016

This application has been filed under Section 151 of the Code of Civil Procedure, 1908 (for short CPC) for placing on record Annexure A/1.

Heard.

In view of the reasons mentioned in the application, the application stands allowed and the copies of house tax receipts (Annexure A/1) are taken on record subject to just objections of the opposite party.

R.S.A No. 3361 of 2013(O&M)

The present appeal has been directed against the judgment

and decree dated 29.01.2013 passed by the learned Additional District Judge, Palwal, whereby the appeal filed by appellant-plaintiff against the judgment and decree dated 29.09.2011 passed by the learned Additional Civil Judge (Sr. Division), Palwal, has been dismissed.

2. Appellant-plaintiff filed the suit for permanent injunction restraining the defendants from grabbing the plot of the plaintiff and from converting the same into a park and from changing the nature of the said plot and also from demolishing the boundary wall existing at the site and further from interfering into his peaceful possession over the plot in dispute. He further sought the injunction restraining the defendants from raising any construction over any part of the plot in dispute and ousting the plaintiff from the possession thereof illegally and forcibly.

3. As per averments in the plaint, the plaintiff is owner in possession of the suit property. Initially, one Ram Chand son of Lalji was owner in possession of the suit property, who sold the same to Karam Chand, the father of the appellant vide registered sale deed dated 30.07.1973. Thereafter, his father transferred the suit property to the plaintiff vide Civil Court decree dated 20.03.1999. The father of the plaintiff has got the site plan sanctioned from the Municipal Committee, Palwal and raised the construction of his house. The plot in dispute was also got demarcated from Ganga Sharan, retired Girdawar as per orders of Assistant Collector, Second Grade, Palwal. On demarcation, it was found that some persons had encroached upon the land of dirty water drain by raising construction of their houses. It is further pleaded that the defendants have no right, title or interest qua the suit property. The same

was never reserved by the Municipal Committee, Palwal for any park. Now, they are intending and threatening to grab the suit property illegally and forcibly. Hence the suit.

4. Respondents-defendants contested the suit on the grounds *inter alia* that the alleged sale deed dated 30.07.1973 does not confer any title as Ram Chand, the vendor had no title to the suit property. It is further pleaded that the judgment and decree dated 20.03.1999 is collusive and not binding on the rights of the defendants. The same also does not confer any title to the plaintiff. Moreover, his father has already sold the land purchased by him to different persons and was left with no right, title or interest to suffer the decree in favour of the plaintiff. It is further pleaded that the father of the plaintiff has got sanctioned the site plan by giving the false dimensions and boundaries in collusion with Rakesh Sharma, the then Junior Engineer, by playing fraud. It is further pleaded that the public toilets are in existence in the suit property which were constructed in the year 1950-51 and were in use till 2000-01. A boundary wall has also been constructed by the defendant-Municipal Committee. With these pleas, the defendants pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 30.03.2010:-

1. Whether the plaintiff is owner in possession of the suit property as alleged?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD
3. whether the plaintiff has no *locus standi* and cause of action to file the suit?OPD
4. Relief.

6. On appreciation of the evidence and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit of the plaintiff vide impugned judgment and decree dated 29.09.2011.

7. Aggrieved with the aforesaid judgment and decree, the appellant-plaintiff preferred the appeal. The same has also been dismissed by the learned Additional District Judge, Palwal, vide impugned judgment and decree dated 29.01.2013. Hence this Regular Second Appeal.

8. I have heard Mr. K.P.Singh, Advocate, learned counsel for the appellant and have carefully gone through the record of the case.

9. Initiating the arguments, learned counsel for the appellant contended that the plaintiff is owner in possession of the land in dispute. The same was purchased by his father from Ram Chand vide registered sale deed dated 30.08.1973. Thereafter, his father transferred the suit property in favour of the plaintiff by way of Civil Court decree dated 20.03.1999. He contended that the possession of the appellant-plaintiff over the suit property is established. The demarcation report Ex.P-8 also establishes the possession of the plaintiff-appellant over the suit property. He further contended that even the site plan for raising the construction in the disputed site was sanctioned by the defendant-Municipal Committee. There is no material difference in the dimensions of the suit property mentioned in the plaint and the sale deed dated 30.08.1973. He contended that the defendant-Municipal Committee has no concern with the suit property. Thus, he contended that the learned Courts below have wrongly

dismissed the suit.

10. I have duly considered the aforesaid contentions.

11. Appellant-plaintiff has claimed to be owner in possession of the suit property which is un-disputedly the part of khasra no. 1811. As per the case of the plaintiff, his father has purchased the suit property vide sale deed dated 30.08.1973 from Ram Chand and the learned First Appellate Court has categorically mentioned that the said Ram Chand was a co-sharer in khasra no.1811 to the extent of 7/9 shares. So, he was not competent to sell any specific portion of the said khasra number to the father of the plaintiff.

12. During the pendency of appeal, a local commissioner was appointed by the learned First Appellate Court in order to ascertain the existing state of affair over the suit property. The report of the Local Commissioner shows that two electric poles were installed therein and the suit property was being used as a public property. The witnesses examined by the defendants have consistently stated that the public toilets were in existence over the suit property. The appellant-plaintiff has not examined any witness of locality to establish his possession over the suit property. Obviously, he cannot be presumed to be in possession of the property which is being used for the public purposes. Thus, as the appellant-plaintiff has not been able to establish his possession over the suit property, he is not entitled to the relief of injunction. Reference can be made to case **Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by Lrs & Ors. 2008(2) R.C.R(Civil) 879.**

13. Thus, keeping in view of my aforesaid discussion, there is no

perversity or illegality in the concurrent findings recorded by the learned Courts below.

14. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

15. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

November 30, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No