

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

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Regular Second Appeal No.1898 of 2015 (O&M)
Date of Decision: March 01, 2016

Shiv Thakur Dwara Prabandak Committee, Regd. Mani Majra

...Appellant

Versus

The Union Territory, Chandigarh Administration and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Jasbir Rattan, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASI, J.

CM No.15179-C of 2015

Prayer in this application is for permission to place on record documents Annexures A-1 to A-15.

Application is allowed.

Documents Annexures A-1 to A-15 are taken on record subject to just exceptions being the part of trial Court record.

RSA No.1898 of 2015

Challenge in this appeal is to the judgment and decree dated 25.03.2011 passed by the Civil Judge (Junior Division), Chandigarh, whereby the suit preferred by the appellant-plaintiff for mandatory injunction directing the respondents-defendants to vacate and hand over vacant possession of the land measuring 17 marlas falling in Khasra Nos.80/27 and 27/1, whereon Department of Education, U.T. Chandigarh, is unauthorisedly running a Government Primary School, situated in the land owned by the appellant-plaintiff, stands dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the Additional District Judge, Chandigarh, on 08.08.2014.

2.

It is the contention of learned counsel for the appellant that the

appellant-plaintiff has, on the basis of the evidence brought on record, proved his ownership over the land under possession with the Government Primary School. He contends that the findings of the Courts below that the land is *shamlat deh* is incorrect and deserve to be set aside. He contends that the map, as has been produced on record, has been admitted by the respondents, wherein the ownership of the appellant-plaintiff has been reflected and once the said map has been admitted, the admission in itself is the best evidence, therefore, the findings as recorded by the Courts below cannot sustain and deserve to be set aside. He asserts that the Courts below have failed to appreciate that the land in dispute has been encroached upon by the respondents-defendants without any authority of law and, therefore, the injunction as prayed for, should have been granted by the Courts below. He, thus, prays that the appeal may be allowed and the impugned judgments and decree set aside.

3. I have considered the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned judgments as also the pleadings and the evidence placed on record.

4. The pleadings of the appellant-plaintiff are that the land bearing Khasra Nos.80/27 and 27/1 as per the revenue record is a part of the land which is owned and possessed by the appellant-plaintiff as it is a part of the land of Shiv Mandir. The Department of Education, Chandigarh Administration, U.T. Chandigarh, is unauthorisedly running a Primary School which is situated on the premises belonging to the Shiv Thakur Dwara Prabandhak Committee. Apart from the building, the land in possession of the school is 17 marlas. The said land now is required for construction of Durga Mandir. Despite notices served upon the respondents,

the possession has not been delivered and, therefore, the mandatory injunction seeking directions to the respondents-defendants for handing over the possession of the land measuring 17 marlas falling in Khasra Nos.80/27 and 27/1 be issued.

5. A perusal of the revenue record would show that in none of the jamabandis, Shiv Thakar Dwara Prabandhak Committee is shown to be the owner of the land comprising of Khasra No.80/27 and 27/1, reference to the jamabandis placed on record Exhibits PW2/1, PW4/A, PW4/B, PW4/C and PW4/D can be made. In the jamabandi for the year 1984-85 Exhibit PW2/1 which is also marked as Exhibit D-6, the land comprising in Khatauni No.1101 and 932, Khasra Nos.80/27 and 27/1 is shown to be owned by Sham Lal Patti Tarli Hasab Rasad Zar Khewat 5860 shares and of Provincial Government three shares total 5863 shares and this land is shown to be in cultivating possession of Tarla Bakhidmat Gujarji Babu Ram etc. and in column No.8, school is shown to be in existence in 12 marlas.

6. The appellant-plaintiff has admitted the school to be running since the year 1982 and one of the plaintiff witnesses Hira Singh PW-3 has stated that the Government Primary School is running since 1977. As per the evidence produced on record by the respondents-defendants in the form of record of copy of attendance registers Exhibits D-1 to D-5, the school is in existence since 1972. It has come in the evidence of the respondents' witnesses as also the pleadings that Joginder, who was the Sarpanch, had donated land to Chandigarh Administration for running the school. Evidence has also come that approximately 100 years ago, one Daulat Ram son of late Shri Labela, resident of Mani Majra, U.T. Chandigarh, had constructed a well for public use on the land in question

which was *shamlat* land. When objection was taken by one of the members of the Thakur Dwara over the construction of the well and claimed ownership of the land in question, Daulat Ram, Zamindar, gave the Thakur Dwara a piece of land measuring 4 kanals 2 marlas at some other location in same village in lieu of the land in question. The appellant-plaintiff has not been able to counter the same.

7. The witnesses, who have appeared on behalf of the appellant-plaintiff, have not been able to give the area in possession of the appellant-plaintiff, in fact a categorical admission has come on their behalf that there is no allotment letter issued by the Chandigarh Administration in favour of the appellant-plaintiff in respect of the land in their possession and on which the temple was constructed.

8. Evidence of PW-2 Daya Kisan, Patwari Halka, is most important as he has deposed on the basis of the records, where he admitted that land bearing Khasra Nos.80/27 and 27/1 belongs to Sham Lal Patti Tarli Hasab Rasad Zar Khewat 5860 shares and of Provincial Government three shares total 5863 shares and this land is shown to be in cultivating possession of Tarla Bakhidmat Gujarji Babu Ram etc. and in column No.8, school is shown to be in existence in 12 marlas. He has categorically stated that the appellant-plaintiff is not the owner of the property in dispute. He has stated that the total area falling under this khasra number is 2 kanals and 12 marlas out of which 2 kanals is in possession of the Shiv Thakur Dwara and the remaining 12 marlas belong to the school on which the same is located. In the cross-examination, he has admitted that Shiv Thakur Dwara Prabandhak Committee is not the owner of the disputed land and that the school is shown in possession in revenue record in column No.8 and the

area of the school is 12 marlas.

9. In view of the above, it cannot be said that the appellant-plaintiff is the owner of the land in dispute and thus, the findings recorded by the Courts below cannot be faulted with resulting in dismissal of the suit.

10. No other point has been raised or argued by the counsel for the appellant.

11. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

12. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

March 01, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE