

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.1488 of 2014 (O&M)

Date of Decision: September 30th, 2016

Rajbir & others

...Appellants

Versus

Municipal Council, Gurgaon

...Respondent

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

Present: Mr.Avnish Mittal, Advocate,
for the appellants.

Mr.Ashwani Kumar Bura, Advocate,
for the respondent.

AMIT RAWAL, J.

Appellant-plaintiffs are aggrieved of the impugned judgment and decree of the Lower Appellate Court, whereby the appeal of the respondent was allowed while setting-aside the judgment and decree of the trial Court, whereby the suit had been decreed.

Mr.Avnish Mittal, learned counsel for the appellant-plaintiffs submits that the plaintiffs had filed a suit for permanent injunction against the defendants on the premise that they are permanent residents of Village Samaspur and owner in possession of the ancestral residential house alongwith boundary wall situated within the abadi deh of village Samaspur and have peacefully enjoined the suit property from the time of their ancestors and raised construction over the same. The defendants wanted to interfere into possession as the Sarpanch threatened to teach a lesson to the plaintiffs on one pretext or the other. The Gram Panchayat served a legal

notice dated 1.9.2006 under Section 24(1) of the Haryana Panchayati Raj Act, 1994 on the plaintiffs. They, on 8.9.2006, appeared before the Sarpanch of Gram Panchayat regarding the abovesaid notice and brought into his knowledge all the facts, but did not yield any result and, therefore, occasion arose to challenge the aforementioned notice, as well the fact, that there was a threat of forcible dispossession.

He further submits that the person, who is found to be in legal and settled possession, cannot be dispossessed except in due course of law even if he is found to be in excess area than the one owned. The Gram Panchayat has merged into the Municipal Corporation and, therefore, they cannot even resort to the proceedings under Section 7 of the Punjab Village Common Lands Act as it is not a shamlat, but bachat land. The Lower Appellate Court has committed illegality and perversity in setting-aside the well reasoned judgment and decree of the trial Court on the premise that the appellant-plaintiffs are in occupation of excess area. In fact, they are owners of only 240 sq.yards and the total area in possession of the appellant-plaintiffs is 484 sq.yards and, thus, urges this Court for setting-aside of the findings of the Lower Appellate Court.

Per-contract, Mr.Ashwani Kumar Bura, learned counsel for the respondent submits that no injunction against the owner is maintainable. Once the property vested in the Municipal Corporation, they have every right to maintain the same, much less seek possession of the property. Jamabandi Ex.P22 placed on record shows that Khasra No.199/2 (0-8), gair mumkin, recorded to be owned and possessed by the plaintiffs, whereas Aks Sijra Ex.P23 shows that the said khasra number is in the measurement of 18 karam (99 feet) and on calculation it was found that the plaintiffs are owners

of only 240 sq.yards. As per the site plan Ex.P8, the plaintiffs are in occupation of more area, as indicated above. This fact is evident from the report of the Local Commissioner Ex.P20 and rightly so, the injunction as sought for has been declined by setting-aside the judgment and decree of the trial Court.

I have heard the learned counsel for the parties and appraised the paper book.

The question, which has arisen before this Court to adjudicate the controversy, is *de hor* of the fact that the appellant-plaintiffs are in possession of more area than the one they own, but whether they can be dispossessed except in due course of law. The answer is that they cannot be, for, a person who is in long and settled possession cannot be dispossessed except in due course of law in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **Rame Gowda (D) by L.Rs Versus M.Varadappa Naidu (D) by L.Rs & another, 2004 (1) SCC 769.**

The findings rendered by the Lower Appellate Court lead to an irresistible conclusion that the appellant-plaintiffs are in possession of 484 sq.yards instead of 240 sq.yards actually owned by them and this fact is also confirmed through the report of the Local Commissioner Ex.P20. The Municipal Corporation, with whom the property in dispute has vested, is well within its right to take possession in accordance with law, but not forcibly, thus, in my view, the Lower Appellate Court ought not to have vacated the injunction order granted by the trial Court.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in

Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR

2016 SC 1213, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, 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, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back. For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article

395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned. Accordingly, the judgment and decree of the Lower Appellate Court is set-aside and that of the trial Court is restored.

Appeal stands allowed.

September 30th, 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No