

RSA No. 1942 of 2014

In the High Court of Punjab and Haryana at Chandigarh

**RSA No. 1942 of 2014(O&M)
Date of Decision:27.5.2016**

Krishan Kumar and another

---Appellants

vs.

Poly Cast Spun Pipes and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sanjeev Bansal, Advocate
for the appellants

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal has been directed against the judgment and

decree dated 6.12.2013 passed by the Additional District Judge, Panchkula whereby the appeal preferred by the respondents/plaintiffs against the judgment and decree dated 16.4.2012 passed by the trial court has been allowed and suit filed by the respondents/plaintiffs for grant of permanent injunction has been decreed.

The respondents/plaintiffs prayed for a decree of permanent injunction on the allegations that Poly Cast Spun Pipes is in existence since 1968 and said factory premises alongwith construction raised thereon includes the shops, store, canteen, tanks and sheds etc. which have been depicted in red colour in the site plan attached, situated on National Highway No. 22 in village Chandi Mandir, Tehsil and District Panchkula. A part of the suit property has been let out to a branch of State Bank of India and the bank is working there. The suit property upon which factory premises and other construction is in existence has a boundary wall which is more than 30 years old and the land is a part of khasra Nos. 157 to 165. The land beneath the factory premises and the constructed portion was earlier on lease but later plaintiffs purchased the same. Possession of the plaintiffs over the suit property is open, continuous and hostile to the

knowledge of the whole world including the defendants and other villagers for the past 37 years.

Defendants Nos. 4 and 5 (appellants herein) filed the written statement raising preliminary objections inter alia maintainability, cause of action, estoppel and non-joinder of necessary parties. It has been averred that the suit has been filed as a counter blast to efforts of the defendants for getting demarcation of their land done from the revenue department for recovering possession. The plaintiffs have encroached upon land of the defendants and they have unauthorizedly and illegally erected building on land of the defendants and this fact is clear from the report of Kanungo who has detailed out that the building housing State Bank of India is in khasra Nos. 160-161, owned by the defendants. The person who has committed an illegal act can have no equity in his favour and is liable to be evicted from the same.

The learned trial court recorded findings on issue No. 1 against the respondents/plaintiffs with the observations that the defendants have not claimed any right over khasra Nos. 157 to 159, 162 to 165 thus, they are not interfering in these khasra numbers. Khasra Nos. 160-161 are owned by the

defendants and the present suit seems to be a counter blast after demarcation was got done by the defendants from the revenue department. As a result, suit of the respondents/plaintiffs was ordered to be dismissed.

As has been noticed hereinbefore, the appeal preferred by the respondents/plaintiffs was allowed by the Additional District Judge, Panchkula by reversing the judgment and decree passed by the learned trial court. It has been held by the appellate court that dispute between the appellants and respondents is pertaining to land falling in khasra Nos. 160-161 only. It has been specifically admitted by respondents No. 4 and 5 that they are getting demarcation for taking back possession. It has also been admitted that appellants had encroached upon the said land and they reserve their right to take possession alongwith mesne profits. Keeping in view averments made in the written statement coupled with the facts recorded in the demarcation report and by relying upon judgment of Hon'ble the Supreme Court of India *Meghmala and others vs. G. Narasimha Reddy and others* 2011(3) Civil Court Cases 6(SC), the Court in Appeal has upheld plea of the respondents/plaintiffs that they cannot be dispossessed from the suit land except in due course of law.

Counsel for the appellants has submitted that as the respondents/plaintiffs are guilty of encroaching upon land comprised khasra Nos. 160-161 that belongs to the appellants, their claim for grant of injunction has been wrongly accepted because allowing a relief in favour of an encroacher would perpetuate the illegality.

I have heard counsel for the appellant, perused the paper book particularly the judgments passed by the courts below.

Counsel for the appellants has not disputed that in view of averments raised in the written statement, the appellants have admitted possession of the land comprised khasra Nos. 160-161 by respondents/plaintiffs. As per the demarcation report, a building over a part of the suit property, rented out to State Bank of India has been constructed. The appellate court has rightly held that in view of the facts noticed during demarcation report (Ex. D5) that a building already stands constructed and the same has been rented out to the State Bank of India, it is sufficient to prove that the respondents/plaintiffs are in established possession of land falling in khasra Nos. 160-161 and they cannot be dispossessed from the said land except by following due course of law as

has been laid down in *Meghmala and others' case (supra)*. Counsel for the appellants has not cited any contrary law that even if a person is in settled possession of a property, the true owner thereof can be permitted to take the law in his hands and eject him forcibly and illegally. That being so, I do not find any error much less illegality in the judgment passed by the appellate court.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed. However, the appellants may take recourse to appropriate remedy, in accordance with law, to recover possession of land of their ownership.

(Rekha Mittal)
Judge

27.5.2016
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