

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4777 of 2015 (O&M)

Date of decision: February 27, 2016

Banarsi Dass

... Appellant

Vs.

Municipal Corporation, Ambala Cantt.

... Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Surinder Mohan Sharma, Advocate
for the appellant.

Surinder Gupta, J

1. This appeal is against the concurrent judgments of courts below whereby suit filed by plaintiff-appellant seeking the relief of permanent injunction restraining the defendant from interfering in his possession over the plot of shop in *shamlat* land shown with red colour as “ABCD” in the site plan attached with the plaint and dispossessing him forcibly and illegally from the plot in dispute, was dismissed.

2. The plaintiff claims to be in possession of disputed plot for the last 12 years and allege that he is carrying on business of building material over the plot. He has submitted that the plot is not within the boundaries of Municipal Corporation, Ambala Cantt as it falls in the area of village *Nanhera*. The building material of plaintiff is still lying over the plot which has been bulldozed by the municipal engineers.

3. The defendant did not appear despite service.

4. Learned Additional Civil Judge (Senior Division), Ambala dismissed the suit with the observations that plaintiff has failed to prove as to in what capacity he is in possession of the *Shamlat* land and how he

came into its possession. He failed to produce any document like registration certificate, income tax/sales tax return etc. concerning his business over the suit land. He also failed to prove that the disputed plot fell within the area of village Nanhera. The plaintiff is not even the resident of village Nanhera.

5. Not satisfied, the plaintiff filed appeal which was also dismissed by the first appellate court.

6. Before the first appellate court, the plaintiff tried to set up the case that even a trespasser can be evicted only in due course of law. The appeal was, however, dismissed by the first appellate court relying on the observations in the judgment of this Court passed in the case of ***Chunni Lal vs. State of Haryana, 2004 (1) Civil Court Cases 586*** and ***Rajinder Kumar Saini vs. Municipal Committee, Hissar, 2001 (3) Civil Court Cases 82***, observing that the encroacher on a public land has no right to seek injunction.

7. Learned counsel for appellant has argued that even if plaintiff is in possession over the suit land as trespasser, he cannot be evicted forcibly and has relied on the observations in the case of ***Meghmala @ Co. vs. G. Narasimha Reddy & Ors. 2011 (3) Civil Court Cases 6 (SC)***.

8. On perusal of above citation, I find that the observations therein are not applicable to the facts and circumstances of the present case. The plaintiff himself claims to be in possession of *shamlat* land of village Nanhera. Admittedly, he is not proprietor of village Nanhera. No witness from village Nanhera was produced to prove his possession over the suit land. Even if it be believed that he has placed some building material over the open plot of the defendant it does not tantamount his settled possession

over the same. In case ***Bhan Singh vs. Tej Singh***, 1996 (3) PLR 153 the act of putting rubbish over a plot was not considered to be sufficient to establish possession over that plot. In the case of ***Muhammad Amin Khan and others vs. Balanda and another***, AIR 1929 Lahore 71 it was observed that mere tethering of cattle, erection of *kacha* shed etc. on a piece of land does not amount to dispossession of the owner of that land.

9. This Court in case of ***Mohan Lal Vs. Mohan Singh***, 1996(1) ***Civil Court Cases 30 (P&H)***, has observed that the Courts are the guardian of public property and a encroacher of public property is not entitled to the discretionary relief of injunction. Discussing the parameters for grant of relief of injunction, it was observed in para 5 of the above judgment as follows:-

“5. *Apart from the three ordinary ingredients which must be satisfied for grant of injunction in favour of a plaintiff/petitioner, namely, a strong prima facie case, balance of convenience and irreparable injury, in cases involving public properties and public interest, the Courts have to bear in mind as to whether the grant of injunction would be conducive or detrimental to public interest. The Courts have to take note of the fact that Government lands belonging to the public at large and the community as a whole is entitled to enjoy the properties belonging to the Government. In fact, the Government holds property as a trustee of the people and, therefore, where any attempt is made by an individual or a group of individuals to misappropriate/misuse or otherwise interfere with the enjoyment of public property by the people in general, the Courts have to be extremely cautious in granting injunction in favour of such person only on the ground*

that he is in possession of the property. Possession of public property by such an individual or a group of individuals is no possession in the eyes of law. Such a person cannot claim any right whatsoever on the basis of unlawful occupation of the public property and Courts would be justified in declining any assistance to such a person. In such like cases, a plaintiff cannot claim parity with a person who has a dispute with another individual over a private property. Moreover, the Courts have to act as guardian of the public property and should not pass an order of injunction in favour of a person who has made unauthorised encroachment of the public property.”

10. Somewhat similar matter also came before the Hon'ble Apex Court in ***Jagpal Singh and others Vs. State of Punjab and others 2011(11) SCC 396***. Subject matter of that suit was also community land. Expressing its grief over the attempt being made by unscrupulous elements to grab common land in villages, it was observed in para 5 of the judgment as follows:-

“5. What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous persons using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with its original character, for

personal aggrandizement at the cost of the village community.

This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs.”

11. In this case, plaintiff has alleged that he placed certain articles on the suit land and the defendant has already bulldozed the articles lying at the spot which indicate that plaintiff is no more in possession of suit land.

12. On perusal of the judgments of the Courts below, I find no factual or legal infirmity therein, calling for any interference.

13. No substantial question of law requiring determination arises in this appeal, which has not merits.

14. Dismissed.

February 27, 2016

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**(Surinder Gupta)
Judge**