

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 4981 of 2015(O&M)

Date of decision : February 23, 2016

Amarjit Singh (deceased) through L.Rs and others

..... Appellants

Versus

Jarnail Singh (deceased) through L.Rs and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. M. L. Saggar, Senior Advocate with
Mr. Sunny Saggar, Advocate
for the appellants.

Mr. Arun Jain, Senior Advocate with
Mr. Varun Parkash, Advocate
for the L.Rs of respondent Nos. 1 and 2.

Mr. Karanjit Singh, Advocate
for Improvement Trust.

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

Amit Rawal, J (oral).

CM No. 11889-C of 2015

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 118 days in refiling the appeal is condoned.

The application stands disposed of.

CM Nos. 11890, 11891-C of 2015

These are applications under Order 22 Rules 3 read with Section 151 CPC for bringing on record the legal

representatives of appellant No. 2 and 3 who are stated to have died on 10.5.2013 and 31.10.2014 respectively duly supported by an affidavit. The legal representatives of the appellant No.2 and 3 are permitted to be brought on record as mentioned in the application subject to all just exceptions.

Registry is directed to make necessary correction in the Memo of Parties.

The applications are disposed of.

CM Nos. 11892-C of 2015

This is an application under Order 22 Rules 4 read with Section 151 CPC for bringing on record the legal representatives of respondent No.12 who is stated to have died on 7.8.2003, duly supported by an affidavit. The legal representatives of respondent No. 12 are permitted to be brought on record as mentioned in the application subject to all just exceptions.

Registry is directed to make necessary correction in the Memo of Parties.

The application is disposed of.

RSA No. 4981 of 2015(O&M)

Reply to the application for vacation of stay has been filed in Court today. The same is taken on record.

The appellants are aggrieved against the concurrent finding of fact whereby the suit claiming declaration that they are owners in possession of land measuring 141 Kanals 12 Marlas bearing khasra numbers as mentioned in the suit in respect of land

situated in village Kot Khalsa, Tehsil and District Amritsar with consequential relief injunction against the defendants from interfering into the possession of plaintiffs over the suit land has been dismissed by both the courts below.

This court after hearing arguments of learned Senior counsel appearing on behalf of the appellants, while issuing notice of motion passed the following order on 15.10.2015:-

“Learned Senior counsel appearing on behalf of the appellants confines his prayer viz-a-viz permanent injunction and do not press for declaration. He further submits that he will challenge the acquisition proceedings in separate proceedings.

*He submits that there are umpteen number of documents on record that the appellants-plaintiffs are in possession and cannot be dis-possessed except in due course of law. In support of his contentions he relies upon the judgment in **Rame Gowda Vs. M. Varadappa Naidu (dead) by L.Rs and another (2004) 1 SCC 769.***

Notice of motion for 29.1.2016.

In the meantime, status quo shall be maintained as it exists on date.”

In view of the aforementioned order, the appellants-plaintiffs have been given right to challenge the acquisition proceedings in accordance with law and viz-a-viz possession this Court had granted status quo.

The application has been filed for vacation of stay on the ground that the land was acquired vide notification dated 19.9.1973 and the possession has been taken in April, 1979 and June, 1984.

Mr. M. L. Saggar, Senior counsel assisted by Mr. Sunny Saggar, Advocate contends that jamabandi for the year 1991-92 shows possession of the appellants-plaintiffs. Both the courts below has heavily relied upon the previous decree rendered in Lala Kesri Dass and others Vs. Nikka Singh and others in which there is a categoric finding that Jarnail Singh-respondent No.1 was represented through L.Rs. The possession could not be taken except in due course of law. The construction has started after the promulgation of the new Act (The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013) and therefore the courts below committed illegality and perversity in declining the injunction. The plaintiffs are in long and settled possession and cannot be dispossessed except in due course of law.

Mr. Karanjit Singh, learned counsel appearing on behalf of the Improvement Trust submits that the appellants had been trying to obstruct the construction as in pursuance to the land acquisition proceedings 300 plots have been carved out and the same have been allotted to various allottees. The mutation No.2397 in this regard, has also been effected, therefore, the possession is deemed to have been of the Improvement Trust and the appellants-plaintiffs cannot take the benefit of long possession and seek injunction.

Mr. Arun Jain, learned Senior counsel assisted by Mr. Varun Parkash, Advocate submits that he is representing L.Rs of respondent Nos. 1 and 2 and they are in adverse possession of the property as tenants as the decree aforementioned was never

executed and therefore their possession is converted into ownership.

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

There is no substance in the arguments of learned Senior counsel for the appellants for the reason that the appellants-plaintiffs have categorically admitted that the possession of the suit land had been taken after passing of the acquisition proceedings and the mutation in this regard, has been effected long time back and in pursuance to the acquisition proceedings, plots have been carved out and process of allotment has been done and under the garb of status quo the appellants are preventing the allottees to take possession.

The plea of Mr. Saggar that the possession was only taken with regard to 423 Kanals and 14 Marlas in April, 1979 and 5 Kanals 17 Marlas in June 1984 has not substance. No certified report to that effect has been produced on record i.e. to show that the possession of the remaining land remained with the appellants-plaintiffs and the appellants-plaintiffs have failed to discharge onus in this regard.

In view of the aforementioned observations, I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. There is no illegality or perversity in the aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

February 23 , 2016
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