

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

**RSA No.2599 of 2012 (O&M)
Date of Decision: 27.03.2017.**

Om Parkash

....Appellant.

VERSUS

Gram Panchayat Nuni Awal

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sanjay Mittal, Advocate for the appellant.

Mr. J.P. Sharma, Advocate for the respondent.

SNEH PRASHAR, J.

The instant Regular Second Appeal had been filed by appellant-plaintiff Om Parkash (hereinafter referred to as the 'appellant') assailing the judgment and decree dated 06.04.2012 passed by learned Additional District Judge (FTC), Narnaul as well as judgment and decree dated 04.08.2010 passed in Civil Suit No.402 of 2005 by learned Additional Civil Judge (Senior Division), Narnaul, by virtue of which suit for permanent injunction filed by the appellant against respondent-defendant Gram Panchayat Nuni Awal (hereinafter referred to as the 'respondent') was dismissed and the appeal preferred by him was partly allowed.

Appellant-Om Parkash sought a decree of permanent injunction seeking to restrain respondent Gram Panchayat from demolishing the old permanent construction made by him levelling the land and from removing

from ejecting him except in due course of law from the land comprised in Khewat No.187 min, Khatoni No.341 min, Killa No.25//12 and 13 Gair Mumkin saw machine (Ara machine) as per Jamabandi for the year 1998-1999 (hereinafter referred to as the 'suit land'), situated within the revenue estate of village Nuni Awal, Tehsil Narnaul, District Mahendergarh. A prayer was also made to restrain the respondent from recovering any damages except lease money on the basis of alleged ejectment order dated 29.09.2004 passed by the Collector Sub Division Narnaul under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, 'the Act of 1971') in case No.32/Misc instituted on 03.06.1992/ 03.07.2002 and decided on 29.09.2004 titled 'Gram Panchayat Nuni Awal vs. Om Parkash' as well as on the order of learned Revenue Commissioner, Gurgaon Division, Gurgaon dated 24.08.2005. The said orders were challenged as illegal and null and void.

The appellant pleaded that he is in possession of the suit land as a lessee on which he had installed a cotton industry in the shape of saw machine and had constructed two pucca rooms, a tin shed, water tank, working Adda, Kanta etc. by spending huge amount and had also taken an electricity connection for running the saw machine. Due to business rivalry, on instigation by some persons, respondent Gram Panchayat had initiated various proceedings against him and an ejectment order dated 29.09.2004 had been passed against him by Collector, Sub Division, Narnaul which was confirmed by Commissioner, Gurgaon. Alleging that the suit land is neither Shamlat Deh nor is covered by the provisions of the Act of 1971 and that the order passed by the Collector is in contravention to the direction given by the High Court vide judgment dated 01.04.1992 and the judgment dated

08.11.1989 passed in Civil Suit No.44 titled 'Om Parkash vs. Gram Panchayat', the appellant prayed for an injunctive order as sought by him against respondent Gram Panchayat.

The suit was contested by the respondent raising various preliminary objections with regard to maintainability of the suit, cause of action, locus standi of the appellant and jurisdiction of the Civil Court to try the suit. On merits, the respondent submitted that an ejectment order dated 29.09.2004 (Ex.PX) was passed against the appellant by Collector, Narnaul under the provisions of Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 (for short, 'the Act of 1972') qua the suit land comprised in Killa No.25//12. The ejectment order was upheld by Commissioner, Gurgaon. The matter then went upto the High Court and in compliance of directions/ order dated 01.04.1992 of the High Court, the appellant was ejected from the said land. It was denied that the respondent had violated any Civil Court decree but it was added that the appellant is neither permanent resident nor Bisweddar or voter of Gram Panchayat village Nuni Awal and is, therefore, not entitled to any relief as per instructions of the Haryana Government qua landless persons.

On the rival contentions of the parties, following issues were framed:-

1. Whether the plaintiff is in possession over the suit property as lessee by constructing old construction as alleged in the plaint? OPP.
2. Whether the present suit is not maintainable in the present form? OPD.
3. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD.
4. Whether the Civil Court has got no jurisdiction to try and decide the present suit? OPD.

5. Whether the plaintiff has not come to the court with clean hands? OPD.

6. Whether the defendants are entitled to special costs under Section 35A CPC? OPD.

7. Relief.

Both the parties adduced evidence in support of their rival contentions.

Considering the submissions made on behalf of the parties and the evidence on record, learned trial Court dismissed the suit vide judgment and decree dated 04.08.2010.

The appellant preferred an appeal which was partly allowed by learned first appellate Court vide judgment and decree dated 06.04.2012 finding that no proceeding as per law had been carried out by the respondent Gram Panchayat for ejectment of the appellant from the suit land comprised in Killa No.25//13, therefore, the Gram Panchayat in the light of judgment dated 18.11.1989 (Ex.PY) cannot interfere in the peaceful possession of the appellant on that part of the land. However, the appeal of the appellant qua remaining land was dismissed.

Feeling aggrieved, the appellant filed the instant Regular Second Appeal.

The submissions made by Mr. Sanjay Mittal, learned counsel representing the appellant and Mr. J.P. Sharma, learned counsel for the respondent have been heard and record perused.

Admittedly, an order of eviction dated 29.09.2004 (Ex.PX) was passed by the Collector, Narnaul against the appellant on a petition under the Act of 1971 filed by the respondent Gram Panchayat qua the suit land

Commissioner, Gurgaon vide order dated 24.08.2005 (Ex.PX/4). Counsel for the appellant also conceded that Civil Writ Petition No.17276 of 1991 titled 'Om Parkash vs. Assistant Collector Ist Grade, Narnaul filed by the appellant on the said cause of action was dismissed by this Court vide order dated 01.04.1992.

The instant suit was filed by the appellant claiming to be a lessee in possession of the suit land comprised in Killa No.25//12 and 25//13 as per Jamabandi for the year 1998-1999 (Ex.PZ). As observed above, the case of the respondent Gram Panchayat was that an ejectment order was passed by Collector, Narnaul under the provisions of the Act of 1972 against the appellant qua the suit land comprised in Killa No.25//12 and in compliance of the said order, he had been ejected from the said land. Neither it was pleaded nor any evidence was led to prove that respondent Gram Panchayat had initiated ejectment proceedings against the appellant qua the suit land comprised in Killa No.25//13 or that any ejectment order in due process of law had been passed by any competent authority. Admittedly, a judgment and decree dated 08.11.1989 (Ex.PY) was passed in favour of the appellant restraining the respondent Gram Panchayat from interfering except in due course of law, in the possession of the appellant over the land comprised in Killa No.25//13.

Learned first appellate Court although dismissed the appeal of the appellant challenging the ejectment order/ eviction from Killa No.25//12 but partly allowed the appeal restraining the respondent from interfering in possession of the appellant qua the land comprised in Killa No.25//13 in the light of judgment and decree dated 18.11.1989 (Ex.PY) passed in favour of the appellant. The respondent Gram Panchayat has not challenged the

judgment and decree passed by learned first appellate Court to the said extent.

As far as ejectment of the appellant from Killa No.25//12 is concerned, he already stands dispossessed from the same. Learned counsel for the appellant failed to demonstrate any illegality or perversity in the ejectment order Ex.PX passed by the Collector, Narnaul and the order dated 24.08.2005 passed by Commissioner, Gurgaon affirming eviction of the appellant from the land comprised in Killa No.25//12. Thus, the appellant had been rightly non suited by learned trial Court as well as by learned first appellate Court as regards his claim in respect of land comprised in Killa No.25//12 is concerned.

Since the appellant has been held to be in possession of the land comprised in Killa No.25//13 and so far there is no eviction order against him passed by any competent Court of jurisdiction qua the land comprised in the said Khasra number, the judgment and decree passed by learned first appellate Court restraining the respondent from interfering in his possession except in due course of law on the basis of judgment dated 18.11.1989 passed by Civil Court in favour of the appellant also calls for no intervention and the instant appeal filed by the appellant being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

27.03.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**