

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

RSA No.2798 of 2013 (O&M)

Date of decision : 27.09.2017

Bishamber Dass and another

...Appellants

Versus

Rakesh Dhir and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Kumar, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

The plaintiffs are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiffs had filed a suit for permanent injunction restraining the defendants from interfering in their possession.

The defendants contested the suit and submitted that in the previous litigation, Sanatan Dharam Sabha which is running S.D. College for Women was declared owner and a decree was passed.

The learned trial Court after appreciating the evidence available on the file and after recording a finding that the plaintiffs have failed to prove any right, title or interest in the property, dismissed the suit.

The plaintiffs have filed the first appeal. The learned First Appellate Court after noticing that the plaintiffs have tried to misuse the process of the Court by encroaching upon some part of khasra Nos.118, 119

and 120 after passing of the decree dated 21.02.1997, dismissed the appeal.

The findings recorded by the First Appellate Court are extracted as under:-

“27. The plaintiffs have badly failed to prove on record that the suit property is a part of the Abadi and does not bear any Khasra number. After passing of the decree dated 21.02.1997 in favour of defendants, plaintiffs cleverly encroached upon some part of khasra no.118, 119 and 120 as opined in demarcation report Ex.D6 and now by alleging the same to be a part of abadi of Mohalla Dhiran, plaintiffs are cleverly trying to legalize their possession over the property possession by S.D. College for Women. There can be no denial from legal proposition that injunction is an equitable and discretionary relief which cannot be granted in favour of a party who does not approach the court with clean hands. The instant suit has been filed by plaintiffs by concealing the true facts, so they were liable to be non-suited on this score only because they themselves have alleged in plaint that earlier their father brought a suit with regard to the suit property as detailed in head note of plaint and as I have already observed that they very suit pertains to house of Surti @ Surat Singh father of the plaintiffs located in Khasra No.121/1-4. So they have got no right to encroach upon the land possessed by defendants composed in Khasra No.118, 119 and 120 by alleging the same to be abadi of Mohalla Dhiran, Sultanput Lodhi.”

Learned counsel for the appellants has vehemently argued that the plaintiffs are in settled possession and, therefore, their possession should be protected.

I have considered the submission. Once the plaintiffs came to the Court claiming themselves as co-owners but failed to prove the

ownership, they are not entitled to injunction. An unauthorized occupant who has tried to encroach upon the land of a Women College, is not entitled to the protection of law.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

27.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No