

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

RSA No.1089 of 2015 (O&M)
Date of Decision: March 29, 2017

Gurnam Singh & Ors.

..Appellant(s)

Versus

Municipal Council Mohali and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. H.S. Dhillon, Advocate
for the appellants.

ANITA CHAUDHRY, J.

CM-3182-C-2015

For the reasons set out in the application, same is allowed
as prayed for and delay of 5 days in filing the appeal is condoned.

CM-3183-C-2015

For the reasons set out in the application, same is allowed
as prayed for and delay of 22 days in re-filing the appeal is condoned.

RSA No.1089 of 2015

This is the plaintiffs' second appeal aggrieved by the
judgments of both the Courts below.

The plaintiffs had initially filed a suit for permanent
injunction pleading that they were in possession of the suit property.
The suit was amended later and the relief of possession was claimed.
The plaintiffs had pleaded that the possession was taken by the private

defendants when they were out of the village and some construction was raised. It was claimed that defendants no.3 & 4 had earlier filed a suit for injunction with respect to this property claiming a right in it but that suit was dismissed and the appeal also failed and they had no right or interest in the property. It was pleaded that defendant no.1 under political pressure had issued a notice and he was entitled to the possession of the property.

Defendants no.1 & 2 took the plea that the suit property was public property and the plaintiffs with the intention to grab the public property had filed the suit on wrong facts and in the earlier litigation the question of title was decided against the plaintiffs. It was pleaded that the suit property was used for common purposes and was situated within the abadi and was owned and possessed by defendants no.1 & 2. It was pleaded that the construction was raised by the plaintiffs to create evidence after the filing of the suit and the construction was only of a Khurli, a Khadda (ditch) and a cattle shed.

Defendants no.3 to 15 filed separate written statement raising the same pleas as taken by the Municipal Council. It was pleaded that the plaintiffs were not the owners nor in possession of the property and the Municipal Council had constructed a Dharamshala with public funds.

The lower court extensively referred to the pleadings and to the finding recorded in civil suit no.706 of 1994 decided on 25.08.2001 and held that the plaintiffs had failed to prove that they had any right in the property. It was also found that they were not in

possession even before the filing of the suit and they were not entitled to its possession.

An appeal was preferred, which too was dismissed.

The counsel for the appellants has placed on record copy of the judgment of the lower Court and the Appellate Court of the previous round of litigation between Sadhu Singh and others Vs. Mukhtiar Singh and others. The plaintiffs had been unable to prove their title to the property. They claim that they were entitled to take their possession as they had been forcibly dispossessed by the private respondents. They claim a right not on the basis of their title but their long possession. The plaintiffs do not own the suit property. The Municipal Council had taken a plea that it was public property. An argument was sought to be raised that the Municipal Council had led no evidence. This argument was rejected by the Courts below and rightly so as the plaintiffs had to stand on their own legs. The plaintiffs had examined one of the plaintiffs besides a Local Commissioner and had produced some photographs, which are no proof of title. The plaintiffs could claim possession if they had some right in the property. There is no infirmity in the findings recorded by both the Courts below.

The appeal is dismissed in limine.

March 29, 2017
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No