

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 09.10.2017****RSA No.3162 of 2016**

Om Singh

...Appellant

Vs.

Rishi Pal & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. Karan Singh, Advocate,
for the appellant.**RAJIV NARAIN RAINA, J. (ORAL)**

1. Indisputably, the plaintiff has no demonstrable right, title or interest by inheritance or title deed over the land in dispute. Earlier, the plaintiff filed a suit for permanent injunction against certain persons i.e. he be not forcibly dispossessed from the suit premises except in accordance with law. Ad interim temporary injunction was denied to the plaintiff. During the pendency of that suit, the plaintiff alleged that the building, which he constructed on the suit property, was illegally and forcibly demolished by the defendants. Accordingly, he withdrew the suit to file a fresh one with liberty granted on the fresh cause of action. This appeal arises out of the fresh suit brought for mandatory injunction directing the defendants to deposit an amount of ₹60,000/- towards the demolition of the house of the plaintiff and return or pay cost of *malba* (debris) and compensate for other articles taken away by the defendants as mentioned in Para.6 of the plaint; furthermore, the house of the plaintiff be got re-constructed from the defendants on their own expenses and the material and articles as mentioned in Para.6 of the plaint be returned to the plaintiff; and

also the wall shown in green colour marked AB and handed over to the possession of defendant No.9 (Nirankari Mission) be directed to be demolished (wall) by the defendants and possession thereof be handed over to the plaintiff.

2. In response to Paras.6 & 7 of the plaint, the defendants pleaded as follow:

“6.It is correct that a Panchayat was conveyed on dated 28.10.2004 for solving this matter, because the plaintiff was adamant to keep the land in question forcefully and that is why, a sum of Rs.7000/- was given to the plaintiff, so that he could not put any hindrance in near future and that amount was given by Gurmali Singh, Sarpanch to the plaintiff and while accepting that amount, the plaintiff has admitted that the land in question belongs to the gram panchayat and now when the gram panchayat Chappar has donated this very land to the defendant No.9, then in that case, the plaintiff has no right over the land in question.

7. That para No.7 of the plaint is also wrong and hence denied. It is specifically denied that the defendant No.2 & others have refused to pay Rs.7000/- as compensation to the plaintiff and rather the plaintiff has already received Rs.7000/- on a condition that he will not put any hindrance in the peaceful possession of defendant No.9. It is specifically denied that any Malba or articles have been carried by the defendants. It is also specifically denied that the plaintiff has spent Rs.20,000/- on the re-construction of the alleged house, whereas no house was ever situated on the land in question and now the defendant No.9 is in peaceful possession of the land in question. It is pertinent to mention here that the plaintiff wanted to encroach upon the land belonging to gram panchayat, Chappar by putting waste material, bricks etc., but the gram panchayat Chappar has stopped the plaintiff from doing so, because the gram panchayat Chappar has already donated this land to the defendant No.9 by passing a Resolution on dated 20.09.2004 and that is why the plaintiff

has filed this suit just to harass and to extract money from the defendants.”

3. The plaintiff did not file replication when it had become necessary especially to refute the new matter pleaded in the written statement, which entirely new facts were not pleaded or disclosed in the plaint and for which the defendants could not be burdened to lead evidence by way of proof since what is not denied specifically is deemed to be admitted. If the story narrated by the defendants holds, then nothing remains as long before filing the suit was instituted, the defendants had in 2004 agreed to settle the matter with the Gram Panchayat paying the plaintiff-appellant a sum of ₹7000/- as price of settlement not to trouble them. Thereafter, by a resolution dated 20.09.2004 (at pp.46 of the paper-book) wherein was recorded inter alia that the suit land amongst other land was gifted by the Gram Panchayat to Sant Nirankari Satsang Bhawan, Branch Chappar by way of registry in the name of Sant Nirankari Mandal and all the proprietors of Village and the Panchayat were agreed to this arrangement. From this Mr. Karan Singh, learned counsel appearing for the appellant, draws an argument that in the resolution, it was also resolved that in Village Chappar, Karnal, “the land between the Road and outside the Southern side Wall of the Sant Nirankari Bhawan on which there are houses and *kurdis*” was also resolved to be gifted to the Sant Nirankari Mandal by the Gram Panchayat. Therefore, possession over the suit property by the appellant is established and it would be for the defendants to show right to forcibly demolish the house. The question was not one of legal or illegal possession way back in 2004 in a Civil Suit brought on 03.03.2006 against 09 defendants including the Nirankari Mandal through its Manager, Village Chappar, Tehsil Indri, District Karnal, arrayed as defendant No.9. The

plaintiff has no claimed title in his prayer clause at the foot of the plaint and nor is the present a title suit. The land does not belong to the appellant on which he claims that there was a building constructed by him and stands demolished. If the building constructed by him has been demolished and the Malba has been stolen, then there appears to be no complaint to the police or other authorities in the District Administration that such an injustice has befallen.

4. Two issues remain for consideration; one is the claim for damages for demolition of house and the money allegedly spent thereon to be refunded by the defendants and secondly, its reconstruction and handing back the possession to the appellant.

5. The question of mandatory injunction to the Nirankari Mandal or to the Gram Panchayat or to the private defendants does not arise since the plaintiff is not the owner of the suit property. As far as issue of Malba and damages is concerned, no evidence has been placed on record to justify the claim of ₹60,000/- from the defendants. The Courts below have recorded that the owner of property was the Gram Panchayat, Chappar, which position is duly reflected in the revenue record i.e. in the jamabandi for the year 2009-2010 Ex.D3 and precariously the Gram Panchayat was not impleaded as a party to the suit which was a necessary party. Besides, if the building was demolished, then remedial action should have been brought within six months from the date of demolition against the demolishers in view of Section 6 of the Specific Relief Act, which was not done. The suit was filed after about a year and a half of the alleged cause of action and, therefore, evidence, if any, is lost forever. Still further, it has not been denied

by the appellant that he was paid ₹7,000/- in 2004 by way of a settlement duly recorded in the proceedings book.

6. In view of the above, I find no ground for interference is made out in this appeal as the judgments and decrees of the Courts below do not give rise to any substantial question of law or reflect any infirmity of reasoning or misreading of evidence. Findings of fact are not meant to be disturbed by substituting opinion by reading the evidence in some other way. Consequently, the instant appeal is without life and has to suffer dismissal. It is accordingly ordered.

09.10.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*