

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

RSA No.6706 of 2016 (O&M).

Date of Decision: 16.01.2017.

Municipal Corporation, Gurgaon

....Appellant.

VERSUS

Hoshiar Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Pardeep Rajput, Advocate for the appellant.

SNEH PRASHAR, J.

CM-315-C-2017

This is an application filed under Section 151 of the Civil Procedure Code (for short, "CPC") for placing on record amended grounds of appeal.

It is submitted that inadvertently grounds of appeal of some other regular second appeal was attached with the present case file. The subject matter of the suit and the cause of action of the grounds of appeal attached are totally different from the instant subject matter of the suit and the cause of action.

Considering the submissions made, the application is allowed and the amended grounds of appeal is taken on record.

Application stands disposed of.

RSA-6706-2016 (O&M)

No.1 Municipal Corporation Gurgaon (hereinafter referred to as the “appellant-defendant”) impugning the judgment and decree dated 16.08.2016 passed by learned Additional District Judge, Gurgaon whereby the appeal filed by respondents No.1 to 3-plaintiffs Hoshier Singh and others (hereinafter referred to as “respondents No.1 to 3-plaintiffs”) challenging the judgment and decree dated 19.11.2015 passed in Civil Suit No.230 of 16.02.2012 by learned Civil Judge (Junior Division), Gurgaon, dismissing the suit for declaration, permanent and mandatory injunction instituted by the respondents-plaintiffs, was partly allowed and the appellant-defendant as well as HUDA were restrained from dispossessing the respondents-plaintiffs from the property in dispute except by following due course of law.

Precisely, the facts are that respondents No.1 to 3-plaintiffs filed a suit for declaration and permanent injunction to the effect that they are owners-in-possession of the residential houses shown in blue colour and letters CEF; yellow colour and letters ABHI; and green colour and letters DEFGHI in the site-plan attached with the plaint (hereinafter referred to as “the houses”) and the appellant-defendant and defendants No.2 and 3 (respondents No.4 and 5 herein) be restrained from interfering in their peaceful possession or demolishing the houses illegally. Respondents No.1 to 3-plaintiffs pleaded that they have no other residential accommodation except the houses which they are occupying for the last more than 60 years. They had raised construction spending huge amount of their earnings and had been regularly paying house tax to the Gram Panchayat. Now when village Jharsa has fallen in the jurisdiction of Municipal Corporation, Gurgaon, the defendants in collusion with each other are trying to

dispossess them illegally and forcibly. It was further pleaded that the appellant-defendant No.1 claimed that the land, on which the residential houses stand constructed, belongs to Gram Panchayat, Jharsa and had been acquired by defendants No.2 and 3 for construction of a Nala/drain whereas the said defendants have no right, title or interest in the land.

Contesting the case, the appellant-defendant pleaded that the plaintiffs had illegally and unauthorizedly encroached upon the land measuring 38 ft x 46ft = 1748 SFT i.e. 194.22 square yards by erecting hutments/ chhappar over the land comprised in Khasra No.45(20-15) Gair Mumkin Johar Ram Talab, situated within the revenue estate of village Jharsa, Tehsil and District Gurgaon. The appellant-defendant claimed to be owner and in possession of the said land and submitted that it has already initiated action under Section 408-A of the Haryana Municipal Corporation Act, 1994 to evict the plaintiffs and the jurisdiction of the Civil Court is barred.

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

1. Whether the plaintiffs are entitled to a decree of permanent injunction restraining the defendants from interfering in the peaceful ownership and possession of the plaintiffs over their suit property and from dispossessing the plaintiffs from the said suit property and also from demolishing the said suit property or any part thereof in any manner?OPP
2. Whether the present suit is bad for want of notice under Section 389 of Haryana Municipal Corporation Act, 1994?OPD
3. Whether the suit is bad for mis-joinder and nonjoinder of parties? OPD
4. Whether the present suit is not maintainable under law and jurisdiction? OPD
5. Whether the plaintiffs have no cause of action to file the present suit? OPD

6. Whether the plaintiffs have no locus standi to file the present suit? OPD

7. Whether the plaintiffs are estopped from filing the present suit by their own acts, conducts, acquisitions, admissions, commissions, latches etc.? OPD

8. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD

9. 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 19.11.2015.

In appeal filed by the respondents No.1 to 3-plaintiffs, though they were held not entitled to the relief of declaration that they are owners of the suit property but they were allowed relief of injunction restraining the appellant-defendant Municipal Corporation and HUDA from dispossessing them from the suit property except by following due course of law. Accordingly, the appeal was partly allowed vide judgment and decree dated 16.08.2016.

Feeling aggrieved with the judgment and decree dated 16.08.2016, the appellant has filed the instant Regular Second Appeal.

The submissions made by Mr. Pardeep Rajput, learned counsel representing the appellant have been considered.

Learned counsel for the appellant-defendant Municipal Corporation argued that both the Courts below consistently recorded a finding that the plaintiffs have failed to prove their ownership qua the land

Municipal Corporation examined DW1 Naveen Kumar, Patwari, Nagar Nigam, Gurgaon who testified that the plaintiffs had illegally and unauthorizedly constructed the houses on land comprised in Khasra No.145 which is a Gair Mumkin Johar. Learned counsel contended that when the plaintiffs failed to prove their ownership qua the land on which they have raised construction and it was established that they had encroached upon the land of the defendant Municipal Corporation, they being trespassers and in unauthorized possession were not entitled to any kind of injunction.

The following are the findings recorded by learned first appellate Court with regard to possession of the plaintiffs over the houses, which led the said Court to allow the relief of injunction to the plaintiffs as indicated above:-

“Meaning thereby, in so far as the proprietary rights of the plaintiffs are concerned, they have failed to establish any such right and they cannot be declared as owners of the property. But, in so far as their long standing possession is concerned, Naveen Kumar, Patwari, witness of the defendants, has admitted in most unambiguous terms that the plaintiffs are in possession at the spot and are residing there in after constructing their residential houses. He has also admitted that there are 150 such houses at the spot, which fact means that the plaintiffs have proved their settled possession over the property in dispute. Not only this, the testimony of Naveen Kumar also reveals that there is nothing on record to suggest that the defendants-Municipal Corporation or HUDA had ever issued any notice whatsoever to the plaintiffs to call them to

*remove the alleged unauthorized construction. Meaning thereby, no opportunity of hearing has ever been given to the plaintiffs so far. The law on the point is fairly settled that once the party succeeds in establishing their possession over the property, the authorities can evict such encroachers only in due course of law. The court draws support from the ratio of case titled **Rame Gowda (D) Lrs. Vs. Mr. Varadappa Naidu (D) by Lrs, 2004(1) RCR (Civil) 519**, wherein the apex court has very clearly held that the law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force.”*

Learned counsel for the appellant-defendant failed to point out any misreading or misappreciation of facts and evidence led by the parties before learned trial Court. Learned counsel could not deny that as admitted by DW1 Naveen Kumar, Patwari, Nagar Nigam, Gurgaon till date no notice for removing the alleged unauthorized construction had been given to respondents No.1 to 3-plaintiffs either by the Municipal Corporation or by HUDA. In its pleadings, the appellant-defendant claimed that it has initiated action under Section 408-A of the Haryana Municipal Corporation Act, 1994 to evict the plaintiffs from the suit property. If that was so, the appellant-defendant Corporation should not have been aggrieved of the relief of injunction granted to the plaintiffs according to which the said

plaintiffs-respondents No.1 to 3 from the suit property except in due course of law. In other words, there is no injunction restraining the appellant-defendant Municipal Corporation or HUDA from initiating proceedings in due process of law for taking possession of the suit property from the plaintiffs-respondents No.1 to 3.

Thus, there being no merit in the appeal, it is hereby dismissed.

Since the main appeal itself has been dismissed, all the miscellaneous applications stand disposed of.

(SNEH PRASHAR)
JUDGE

16.01.2017.
jitender sharma

Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**