

121.

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

RSA-1086-2017 (O&M)

Date of decision: 11.05.2017

Darshan Singh and others

.... Appellants

Versus

Municipal Council, Nurmahal, through its Executive Officer.

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Balbir Singh Sewak, Advocate,
for the appellants.

HARI PAL VERMA, J.

The appellants-plaintiffs have filed the present Regular Second Appeal against the judgment and decree dated 13.12.2016, passed by learned Additional District Judge, Jalandhar, whereby their appeal against the judgment and decree dated 08.02.2016 passed by learned Additional Civil Judge (Senior Division), Phillaur, was dismissed.

Briefly stated, the appellants-plaintiffs (herein referred as 'plaintiffs') had filed a suit for permanent injunction restraining the defendant from interfering or dispossessing the plaintiffs from the suit land and further, restraining the respondent-defendant from raising any construction on the suit land, as detailed in the plaint. As per plaint, the suit property is a shamlat land of Patti of Jana Mehru Kesar, comprised in Khasra Nos.147 & 148 (15-15) and is in possession of the

plaintiffs for the last 30 years. Earlier it was barren land and the plaintiffs made it cultivable with the dint of their hard work and also by spending a lot of money over it. Therefore, the defendant-Municipal Council, Nurmahal-respondent (herein referred as 'defendant') has no right, title or interest in the suit property, who are disturbing their peaceful possession and trying to dispossess the plaintiffs. The plaintiffs requested the defendant many times not to do these illegal acts, but to no avail. Hence, the suit was filed.

On notice, the defendant appeared and filed written statement taking preliminary objections that the plaintiffs have no locus standi to file the suit and the suit is barred under Section 49 of the Punjab Municipal Act. On merits, all the averments made in the plaint have been denied specifically, except the fact that as per law, all other common land, like that of Shamlat Patti Hasal Rasad Khewat being common land vests in the Municipal Council for all the purposes of ownership as well as management. It was denied that the plaintiffs are in possession of the suit land for the last more than 30 years. Plaintiffs are simply the trespassers and the suit land vests in the defendant as owner. Therefore, no injunction can be issued against a true owner.

One of the issues framed by the trial Court is, “*Whether plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP*”. In order to prove their case, the plaintiffs examined Satnam Singh as PW1, PW2-Santokh Singh, PW3-Prem Chand and Darshan Singh himself stepped into the witness-box as PW4. The

contention as put forward by the plaintiffs that the defendant is not the owner of the suit property was considered by the trial Court. So far as the possession of the plaintiffs over the suit land is concerned, the same was admitted as the defendant-Municipal Council, Nurmahal has filed a petition against the plaintiffs under the provisions of Punjab Public Premises Act which is proved on file as Ex.PY, which is pending. All the khasra girdawaries placed on the file duly prove the possession of the plaintiffs over the suit land compromised in Khasra Nos.147 & 148. PW1-Satnam Singh had admitted that the mutation of the land in dispute was sanctioned in favour of defendant. PW2- Santokh Singh also admitted that the mutation had been sanctioned in favour of defendant which was wrongly mutated. The girdawari has been changed by the Naib Tehsildar in favour of respondent. PW3-Prem Chand had stated that Exs.D1 and D2 are the photographs of the suit land where Municipal Committee has affixed its stone. He has not seen the ownership proof of the land in dispute. The Halqa Patwari, Nurmahal stated that he brought the register of Mutation No.1046 and as per the register, the mutation has been changed in favour of Municipal Council, Nurmahal and in the column of possession, it has been mentioned as "Kashtkar Badstoor" which means who was cultivating the land previously is cultivating the same presently.

On the other hand, DW1-Dev Raj has categorically stated in his examination-in-chief that the property in dispute is owned and possessed by Municipal Council, Nurmahal and has started the process

of taking possession of the suit land and also installed a Board on the land to that effect.

The trial Court found that the plaintiffs are in illegal possession over the suit land and vide judgment and decree dated 08.02.2016 dismissed their suit.

Aggrieved against the aforesaid judgment and decree dated 08.02.2016, the plaintiffs filed an appeal. However, their appeal was also dismissed by the Lower Appellate Court vide judgment and decree dated 13.12.2016.

It is in the aforesaid circumstances, the plaintiffs (appellants herein) have filed the present Regular Second Appeal.

Learned counsel for the appellants has argued that the appellants are in possession of the suit land since long and the change was effected in the khasra girdawari of the land in dispute by the revenue officials during the pendency of the civil suit by violating the status quo order. Further, the alleged change in the ownership column in the revenue record from shamlat patti to the name of Municipal Council, Nurmahal is totally illegal and without any orders of competent authority. The appellants are still in possession of the land in dispute and they are cultivating the same, but the respondent officials are wrongly alleging that the Nagar Council is in possession of the land in dispute and they have wrongly changed the khasra girdawari of the land in dispute in the name of Nagar Council. Whereas, on the other hand, they have filed proceedings under the Public Premises Act for

taking possession of the land in dispute from the appellants. The courts below have failed to appreciate the fact that when the appellants are in possession since long, they are entitled for injunction and they can only be thrown out by adopting due procedure of law.

I have heard learned counsel for the appellants.

Admittedly, the suit property i.e. comprised in Khasra Nos.147 & 148, measuring 15 Kanals 15 Marlas, is in the ownership of defendant-Municipal Council. Though the plaintiffs were possessing the suit land since long, but their possession was found to be illegal. Moreover, the mutation has been sanctioned in the name of Municipal Council, Nurmahal. A mere plea that the plaintiffs have filed proceedings against the Municipal Council, Nurmahal, is no ground for interference in the present appeal.

No other point is argued.

No substantial question of law arises in the present regular second appeal.

In view of above, this Court does not find any reason to interfere with the findings of the courts below which are based on concurrent findings of facts. Accordingly, the present Regular Second Appeal is dismissed.

(HARI PAL VERMA)
JUDGE

11.05.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No