

RSA No. 3044 of 2017 (O&M)

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

RSA No. 3044 of 2017 (O&M)

Date of Decision: 1.6.2017

Saudagar Singh Ragi

.....Appellant

Vs.

State of Punjab and others

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Manu K. Bhandari, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Unsuccessful plaintiff is in regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for permanent injunction was dismissed by the learned trial court vide impugned judgment and decree dated 31.8.2015 and his first appeal was also dismissed by the learned first appellate court, vide impugned judgment and decree dated 28.3.2017.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that plaintiff filed the suit for permanent injunction against the defendants on the averments that he was a blind person and had been appointed as Ragi inside Quila Androon at Baba Alla Singh Di Gaddi on 27.2.1980 by Director Archives. He was performing

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his duty since the date of his appointment. At the time of his appointment, house in question was given to him for his residence. He was in actual and peaceful possession of the house in question and he was residing in the same along with his wife and children. The electricity connection was also in his name in the said house and he was regularly paying the electricity bills. It was further pleaded that so many other employees were residing inside Quila Mubarak and there were so many other residential accommodations in the said Quila which have not been got vacated by the defendants till date. The defendants were bent upon and were threatening to interfere in the peaceful possession of plaintiff over the house in question and also to dispossess him from the same forcibly and illegally, for which the defendants have no right, title or authority. Therefore, he has filed the suit.

Having been served, defendants put appearance and filed their contesting written statement, taking more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, the learned trial court framed the following issues:-

- 1. Whether the plaintiff is entitled for decree of permanent injunction as prayed for ?OPP*
- 2. Whether no legal and valid notice under section 80 CPC was served upon the defendants as alleged ?OPD*
- 3. Whether the suit is not maintainable as alleged ? OPD*
- 4. Relief.*

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has failed to prove his case by leading cogent and

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convincing evidence. Accordingly, his suit for permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 31.8.2015. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court, vide its impugned judgment and decree dated 28.3.2017. Hence this regular second appeal at the hands of plaintiff.

Heard learned counsel for the appellant.

It is a matter of record and not in dispute that suit property was a protected monument known as Quila Mubarak located at Patiala. Neither appellant was an allottee, nor he was a licensee. His possession on some part of the protected monument known as Quila Mubarak was illegal on the face of it. To get removed such kind of encroachments, CWP No.17704 of 1997 (Munshi Ram Vs. State of Punjab and others) came to be filed before this Court. A Division Bench of this Court, vide its order dated 4.10.2008, issued specific directions to both the States of Punjab and Hayana for getting removed illegal encroachments from the protected monuments.

In compliance of the abovesaid directions issued by this Court, competent authority of the respondent-State of Punjab issued notice dated 740 dated 4.7.2014 to the plaintiff-appellant, pointing out more than one reasons. One of the reasons was that Quila Mubarak was in a dilapidated condition. It was not safe but dangerous for human habitation. When the appellant was not responding to the notice issued to him, one last and final opportunity was granted to him to remove illegal encroachment from some part of Quila Mubarak. However, instead of removing illegal encroachment, appellant initiated instant wholly unwarranted litigation, by filing the suit for permanent injunction. Having said that, this Court feels no hesitation to

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conclude that the learned courts below were well within their jurisdiction to pass the impugned judgments and decrees which deserve to be upheld.

As noticed hereinabove, appellant has no case either on facts or in law. Appellant was a rank trespasser on the public property. Authorities of the respondent State were duty bound to comply with the directions issued by this Court for getting illegal encroachments removed. This is what was sought to be done by issuing notice to the appellant. Thus, action taken on behalf of the authorities of the respondent State cannot be said to be an arbitrary action. Further, appellant was not being condemned unheard. Despite the undisputed fact that he was in illegal possession, rules of natural justice were still complied with. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned first appellate court examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in para 11 and 12 of its impugned judgment, which deserve to be noticed here, read as under:-

11. Balwant Singh Mangat Conservator posted in the office of Director Department of Archives, Punjab Chandigarh appeared in the witness box as DW1 and tendered his affidavit Ex.DW1/A in which he stated that while deciding CWP no.17704 of 1997 the Hon'ble High Court has directed the Archaeological and Survey of India, Government of India and State of Punjab to remove the illegal encroachments from the protected

monuments situated in Punjab under the Central Act i.e., the Ancient Monuments, Archaeological Sites and Remains Act, 1958 and Punjab Ancient and Historical Monuments and Archaeological Sites) and Remains Act, 1964 vide order dated 4.10.2008 to take action according to law against the illegal occupants. The witness proved the copy of judgment of the Hon'ble High Court as Ex.D1. The Government of Punjab has taken action as per directions issued by the Hon'ble High Court. In view of the directions issued by the Hon'ble High Court the State of Punjab issued notification dated 27.1.2009 whereby as per sub section 3 of section 4 of the above said Act it was decided to keep safe Quila Mubarak, Patiala. The plaintiff is in illegal occupation of the room in Quila Mubarak, Patiala which is unsafe and unfit for human habitation. In compliance of the judgment of the Hon'ble High Court notice dated 4.7.2014 (Ex.D3) was served upon the plaintiff by defendant no.2 to vacate the room within a period of 48 hours. The plaintiff did not vacate the premises within the stipulated period even after receipt of the notice. No allotment of house was made to the plaintiff for his residence and the plaintiff is getting house rent from the Department. As per letter dated 18.7.2014 issued by Director, Department of Archives, Punjab Chandigarh no allotment was made to the plaintiff. No other employee is residing inside Quila Mubarak. This is the evidence led by the parties.

12. The plaintiff has based his suit on the ground that he was appointed as Ragi inside Quila Androon at Baba Alla Singh Di Gaddi on 27.2.1980. He was provided the demised house as his accommodation. Therefore, it means that the demised premises was given to the plaintiff for his accommodation. He was appointed as Ragi by the Department and a letter was issued to the

plaintiff that he was given the demised premises for his residence but no such letter has been produced by the plaintiff. The defendants have taken the plea that the demised premises were not given to the plaintiff for his residence and the plaintiff was given house rent allowance and this fact is proved on the file vide letter bearing no.4933 dated 18.7.2014. It was further mentioned in the said letter that the demised premises were not allotted to the plaintiff. Therefore, from the above discussion it is proved on the file that the plaintiff is in illegal possession of the demised premises and the Department has issued notice to vacate the same. The Quila Mubarak has been declared as protected monument. Therefore, as the possession of the plaintiff is illegal and he has not produced any allotment letter showing the fact that he was provided the said accommodation by the Government. The plaintiff is receiving the house rent from the defendants. It is settled principle of law that a person who seeks equity from the court must do equity. The plaintiff has not approached the court with clean hands. Therefore, this court is of the considered opinion that the plaintiff is not entitled for permanent injunction as prayed for. Therefore, this court is of the opinion that the findings of the learned trial court on issue no.1 are also based on correct appraisal of facts and evidence and the same are hereby affirmed.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in either of the impugned judgments rendered by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the

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Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

1.6.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No