

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

**RSA No.603 of 1987 (O&M)
Date of Decision: February 16, 2018**

Gian Chand (since deceased) through legal representatives ...Appellants

Versus

Municipal Committee Banur ..Respondent

RSA No.1171 of 1987 (O&M)

Gian Chand (since deceased) through legal representatives ...Appellants

Versus

Municipal Committee Banur and another ..Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vikas Singh, Advocate
for the appellants.

Mr. G.S. Attariwala, Advocate
for the respondents.

FATEH DEEP SINGH, J.

The present application C.M. No.2208-C of 1987 has been moved by the appellant in RSA No.1171 of 1987 under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence seeking permission to place on record copy of jamabandi. Since it is a simplicitor suit for permanent injunction and question of title is not to be gone into and copy of jamabandi is not a document of title and is purely to enable a person to pay land revenue would not bring about much solace to the applicant-

appellant. More so, he had already proved on record innumerable documents from the revenue records including jamabandies and both appeals are being decided conjointly leaves no scope to allow the same and this Court does not augur well with the contention raised by learned counsel for the appellant which is controverted by learned counsel for the respondent that the same is essential for the just decision of the case. Thus, the application for leading additional evidence moved by the appellant is without any merits and as such stands dismissed.

Since both these regular second appeals are between the same set of parties, wherein, similar relief of decree for permanent injunction being sought on similar grounds, though, in respect of two different sets of properties i.e. Khasra No.4875 and Khasra Nos. 1263 and 1264 both situated in the same very revenue estate of village Banur and as the common question of law and facts are involved, thus, are being disposed off together.

The original plaintiff-Gian Chand (now deceased) being represented by his legal heirs initially filed against Municipal Committee, Banur, a Civil Suit No.229 of 16.4.1980, whereby, he has sought a decree for permanent injunction restraining the defendant from entering in peaceful possession or otherwise dispossessing him from the site in question comprising of part of khasra Nos.1263 and 1264 situated in *abadi deh* Banuar claiming that he was in possession of the site in dispute being owner from the time immemorial through his ancestors and being proprietor of village Banur had share in *abadi deh* as well as in the *shamlat deh* of the village. Claiming that they have been using this property as *bara* and used

to throw *roori* and was threatened with dispossession by the defendant/Committee. The defendant-Committee in their written statement took the plea that in earlier suit which was dismissed was withdrawn by the plaintiff, a plea has been taken that site in dispute vests with Municipal Committee and is in occupation of the plaintiff and denied the contention of the plaintiff claiming that land vested in Small Town Committee which has now become Municipal Committee and denied the possession of the plaintiff claiming that the plaintiff by making illegal encroachment over the property has fixed *bara* and after issuance of notice dated 4.1.1973 under Section 173 of the Punjab Municipal, Act by the Municipal Committee had removed the same.

Out of the pleadings of the parties the trial Court had framed the following issues:-

1. Whether the plaintiff is owner in possession of the suit property? OPP
2. Whether the suit in dispute is part of khasra No.1 1263 and 1264 as alleged? OPP
3. Whether the plaintiff is entitled to the injunction prayed for? OPP
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the civil court has no jurisdiction to try this suit? OPD
6. Whether the defendants are entitled to compensatory costs? OPD
7. Whether the plaintiff has become owner of the suit property by way of adverse possession. OPP
8. Relief.

The plaintiff to prove his case examined PW1 Amrit Lal, Draftsman, PW2 Sukhdarshan Parshad, Deed Writer and himself stepped into the witness box as PW3 and examined PW4 Bhajan Singh, PW5 Tarsem Chand, PW6 Rameshwasr Dutt, PW7 Parshotam Dass, PW8

Ajit Singh,, PW9 Jagjit Singh, PW10 Surat Parshad, PW11 Ved Parkash, Photographer and proved site plan Ex.P4, Jamabandies Ex.P5 to Ex.P7, Copies of khasra girdawaries Ex.P8, Copy of pedigree table Ex.P9 and Ex.P10, copy of order dated 7.4.1980 Ex.P11, Copy of khasra girdawari for the years 1980-81 Ex.P-12 and copy of judgment dated 6.10.1980 Ex.P13 and closed his evidence. On the other hand, defendant examined Om Parkash, Clerk of the Municipal Committee as DW1, Bimal Kumar DW2, Jaswant Lal DW3, Piara Lal DW4 and closed his evidence after placing on record copy of order Ex.D-29.

The Court of learned Sub-Judge, Ist Class, Rajpura through judgment dated 15.4.1983 decreed the suit of the plaintiff. Upon appeal by the Municipal Committee, the Court of learned Additional District Judge, Patiala through impugned judgment dated 22.11.1986 reversed the findings, thereby, allowing the appeal of the Municipal Committee. The unsuccessful plaintiff has filed regular second appeal No.603 of 1987 before this Court.

By another quirk of fate, the plaintiff Gian Chand now being represented by his legal representatives filed another suit for permanent injunction restraining the defendants from interfering in peaceful possession of the plaintiff or otherwise dispossessing the plaintiff from land measuring 4 bighas and 1 biswas comprising khasra No.4875 situated in village Banur, Tehsil Rajpura, claiming to be being in possession of land in question which he claims was being dispossessed after due service of notice by the defendant. The defendant took the plea denying the ownership of the plaintiff over property and claimed that Municipal Committee was the

owner in possession and that a dirty water drain passes through the same which belongs to the local body and, thus, denied the case of the plaintiff.

Out of the pleadings of the parties following issues were framed:-

1. Whether the plaintiff is in possession of the suit land as owner from the time immemorial? OPP
2. Whether the plaintiff has matured his title by adverse possession? OPP
3. Whether the plaintiff is entitled to the injunction prayed for? OPP
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the defendants are entitled for compensatory costs? If so, to what amount? OPD
6. Relief

The plaintiff in his evidence examined his two tenants as PW1 Nahar Singh and PW2 Prem Chand and proved documents Ex.P1 and, thereafter, examined PW3 Suresh Kumar, PW4 Draftsman, PW5 Labourer and himself stepped into the witness box as PW6 and examined PW7 Sunder Singh, PW8 Scribe of the document, PW9 Scribe of another rent note, PW10 Labourer, who bored the tubewell and PW11 Jagdish Chand, PW12, PW13 Local Commissioner, who proved report Ex.PW13/D, order of the Court Ex.PW13/A, Notice Ex.PW13/B and site plan Ex.PW13/C and, thereafter, examined PW14 Halqa Patwari to prove that land is *abadi deh* and in the process proved documents Ex.P1 to Ex.P22 and Ex.PW5/A, Ex.PW7/A, Ex.PW8/A, Ex.PW8/A Ex.PW10/A Ex.PW11/A. Ex.PW12/A. On the other hand, defendants examined DW1, Clerk of Municipal Committee to reiterate their stand. It is through judgment and decree dated 20.02.1985, the Court of learned Additional Senior, Sub Judge, Rajpura dismissed the suit of the plaintiff with costs. Against these findings, the plaintiff filed appeal and the Court of learned District Judge,

Patiala through impugned judgment dated 16.1.1987 dismissed the appeal with costs. It is consequence of this background, two regular second appeals have come about.

As conceded by the learned counsel for the two sides the material issue revolves around question as to the entitlement of the plaintiff to decree of permanent injunction.

Heard learned counsel for the parties and perused the records of the case. Appreciating the submissions of the two sides, it is the golden principle that has evolved over a period of time that onus to prove a case solely rests upon plaintiff/now appellant and who cannot be allowed to take undue advantage of the weaknesses of the defendant's case. Reliance placed on **Punjab Urban Planning and Development Authority Vs. M/s Shiv Saraswati Iron and Steel Re-Rolling Mills 1998 (2) RCR (Civil) 292** Though, the Court below has framed multiple issues and since the suit is purely for seeking decree for permanent injunction and, therefore, all issues so framed except entitlement of injunction are rendered superfluous. More over, it is a well settled law reliance placed on **Anathula Sudhakar vs. P. Buchi Reddy (dead) by LRs and others 2008(2) RCR.(Civil) 879** that in a suit for permanent injunction question of title is not to be adjudicated upon. Both the properties are situated in the village Banur and are near to each other bearing Khasra No.4875 and Khasra Nos.1263 and 1264 both form part of *abadi deh*. The onus of the principal issue as to the entitlement of injunction is placed upon the plaintiff who examined number of witnesses and led immense documentary evidence. It is very well come in the testimony of PW14, Halqa Patwari that the suit land is within the municipal

area and the same is uncultivable and only wide growth of grass is there rather undermines the case of the plaintiff, whereby, he has examined PW1 Nahar Singh and PW2 Prem Chand as his tenants cultivating the land in question, The own witness of the plaintiff do admit that a *cho* passes through the land in question and which is the stand of the civic body that it is a drain owned by them for civic utility. Since the own witness of the plaintiff PW14 Halqa Patwari states that no crop was ever sown, thus the claim of the plaintiff on the basis of khasra girdawari that it is being cultivated is rather negated by his own witness. More so, it is the further stand of the plaintiff that the disputed property forms part of *abadi deh* and, therefore, in the absence of any clear cut evidence it cannot be accepted as per the contention of learned counsel for the appellant that he is owner in possession of this land which if is accepted to be so on the face of it could at the most would vest in the entire proprietors of the village. Especially, when PW14 Halqa Patwari states that land falls within the limit of Municipal Committee, Banur are matters of much significance. On the other hand, some of the entries in the revenue record relied upon by the plaintiff show that it is under occupation of *gairmarusi* and it is not the case of the plaintiff that he is a tenant in the land in question. Therefore, locus standi of the plaintiff together with the entries made in the column of the ownership which are shown to be *Makbuja Bashindgan*. The Court below has considered the documentary evidence taking the stand that set of the documents which has been produced by the private witnesses has been prepared in connivance with the plaintiff to strengthen the claim of the plaintiff and further more as has been laid down in impugned judgment

there is non-mention in the khasra girdwari as to the name of the lessee, if it is so rather puts a big question mark over the genuineness of these documents. Rather what comes up from the impugned findings the revenue record shows that possession is earlier shown to be the residents of village and, thus, contradicts the stand of the plaintiff. Since the plaintiff has not been able to show any document of his ownership and in view of the presumption that actual possession follows title certainly also does not come to the aid of the plaintiff. Furthermore, the Court of learned Additional District Judge, Patiala in impugned findings dated 22.11.1986 has castigated the learned trial Court for misconstruing the evidence led on the records and rather witness DW1 Om Parkash has denied the suggestion that Gian Chand was in occupation of land in question. Merely staking of *roori* does not vests in a person legal possession unless it is corroborated by other means and none of the evidence to corroborate the same is forthcoming from the side of the plaintiff. Admittedly, even second chunk is *abadi deh* which vests in proprietors of the village and plaintiff could not show how he is in exclusive possession of the same and it is well enunciated in the evidence of the defendants that disputed site is lying vacant rather leads the Court to presume that possession vests in owner and in the absence of any ownership prima facie brought on the records negates the case of the plaintiff. More so, the own document of the plaintiff Ex.P13 which is judgment of the Court of learned District Judge, Patiala bears out that it is the stand of the plaintiff Gian Chand that the possession of disputed land has been taken by the Municipal Committee after issuing notice dated 6.1.1975 and for which he has been granted compensation by way of damages leaves no question that

the plaintiff is still in possession of the property and had it been so he has been illegally and forcibly dispossessed he was well within his right to seek recovery of the possession of the said property which admittedly learned counsel for the appellant accepts that there has been no redressal of such a grievance and if it is so it is an admission by the plaintiff before the Court below and he cannot wriggle out of it in terms of Section 17 of the Evidence Act rather fully negates the case of the plaintiff from all corners. Giving a thoughtful consideration to the impugned judgments of the Courts below the learned counsel could not convince how or in what manner the plaintiff was entitled to relief for decree for permanent injunction qua property in dispute and rather what has been recorded by the Court below there is a frustrated endeavour by the plaintiff to occupy illegally and forcibly property of the civic body and which has become quite common in this part of the country and, therefore, public property needs to be protected.

In the light of what has been detailed and discussed above, there is no merit in both the appeals and the same being hopelessly without any merits stand dismissed.

(FATEH DEEP SINGH)
JUDGE

February 16, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No