

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

**RSA No. 1643 of 2012 (O & M)
Date of Decision:-12.2.2018**

Govind Ram and another

...Appellants

Versus

Municipal Committee through its President and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Namit Gautam, Advocate
for the appellants.

Mr. Dinesh Arora, Advocate
for the respondents.

AMIT RAWAL J.(Oral)

The appellant-plaintiffs are aggrieved of the non-grant of relief viz a viz the forcible and illegal dispossession except in due course of law in respect of the property in dispute.

The appellants-plaintiffs instituted a suit for declaration and permanent injunction on the premise that they are owner in possession of a vacant plot situated in the abadi deh of Municipal limits, Jhajjar which was bounded as under :-

North	287 feet (house of plaintiffs & other residents)
South	297 feet (Police Station, Jhajjar)
East	58 feet (house of Subash son of Surajbhan)

West 58 feet (house of Udai Singh)

The plaintiffs always used to tether their cattles and store firewoods on the suit land muchless also constructed a house on the North East side and a wall of 5 feet in height. The defendants threatened to remove the constructed wall, which gave cause of action to file the civil suit. There was also an attempt to close the door existing in Southern side of the house of plaintiffs as shown in the site plan Ex.P5.

The aforementioned suit was contested by the respondents-defendants on the premise that the plaintiffs were in illegal and unauthorized possession of the land meant for cattle pond and had constructed the boundary wall. Notice in this regard was also sent to the plaintiffs by the respondents-defendants on 30.6.2008. The ownership of the plaintiffs was categorically denied but did not deny the averments in the plaint that the wall was demolished on 8.7.2008.

The plaintiffs in support of their case have examined himself as PW1, Shri B.D.Mishra as PW2, Shri Ved Pal Clerk as PW3, Shri Tara Chand as PW4, Shri Jai Bhagwan as PW5 and Shri Mahabir as PW6 and brought on record Ex.P1 the site plan, Ex.P2 reply of the notice, Ex.P3 postal receipt, Ex.P4 report of the Local Commission and various other documents as described in para 5 of the trial Court judgment.

The defendants in order to prove their case have examined Shri Mahinder Kumar Draftsman as DW1 and Shri Dilbag Singh as DW2 and tendered into evidence Ex.D1 i.e. copy of site plan, Ex.D2 copy of site plan, Ex.D3 report of J.E., Ex.D4 notice issued by the Municipal Committee to

plaintiffs, Ex.D5 copy of register, Ex.D6 copy of register and Ex.D7 copy of the application.

The Courts below on the preponderance of the evidence partly decreed the suit by restraining the defendant Municipal Committee from not closing the door existing on the Southern side of the house shown in the site plan Ex.P1 and Ex.P5 forcibly and illegally except in due course of law. However, the remaining relief claimed by the plaintiffs in their suit was declined and also did not grant the injunction with regard to other part of the possession on the premise that the plaintiffs miserably failed to prove their possession.

Mr. Namit Gautam, Advocate learned counsel appearing on behalf of the appellants submits that there has been a misreading of both oral and documentary evidence. The sale deed dated 7.4.1988 (Ex.P2) was in respect of the land sold by a neighbour, whereby there was a description that in the Western side there was a house of Ganga Ram who was none else but the father of the appellants-plaintiffs. Therefore, there was a long and settled possession with regard to the site in dispute. In view of the ratio decidendi culled by the Hon'ble Supreme Court in **Rame Gowda (deceased) through LRs vs. Mr. Varadappa Naidu (deceased) through LRs and another 2004(1) SCC 769**, the possession was liable to be protected. Even the notices Ex.P-12 and P-13 showed the possession of the premises, therefore, there is illegality. The report of the Local Commissioner is also to the same effect. The defendants have not been able to prove that the site was allotted to the police station whereas as per the

document Ex.P9 the Police Department denied the existence of the police station.

Per contra Mr. Dinesh Arora, Advocate learned counsel appearing on behalf of Municipal Committee submitted that the plaintiffs have failed to prove their possession and therefore rightly directed by the learned Appellate Court with regard to the closing of the door. So there is no illegality and perversity in the judgment and decree passed by the learned lower Appellate Court.

I have heard learned counsel for the parties, apprised the paper book.

As per the ratio decidendi culled by the Hon'ble Supreme Court in **Rame Gowda's** case (supra) it is settled that a person claiming injunction, even if he is not an owner, has to establish his long and settled possession. All the notices which have been placed on record are of the year 2008-09 except one sale deed executed by a neighbour in favour of their father Ganga Ram, wherein the description of the property has been given. The aforementioned evidence in my view would not clothe the status of the long and established possession as per the ratio, aforementioned, rightly so the Courts below did not grant injunction. It was incumbent upon the appellants to place on record some other material to show that they were in long and settled possession. Serving of a notice in the year 2008 and filing of suit in 2008 could not bring the case within the parameters of the judgment aforementioned.

No ground for interference in the judgment and decree of the

lower Appellate Court or any substantial question of law is made out.

Resultantly, the appeal stands dismissed.

February 12, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No