

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

RSA No.1294 of 2016 (O&M)

Date of decision : 09.08.2018

Hardam Singh

...Appellant

Versus

Bathinda Development Authority, Bhagu Road, Bathinda

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Aggarwal, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below while dismissing the suit filed by the plaintiff for permanent injunction restraining the defendant from interfering in his peaceful possession, as also for grant of decree for mandatory injunction for removing the encroachment.

The plaintiff claimed that he is co-sharer to the extent of land measuring 21 bighas and 3 biswas within the area of Patti Jhutti, Bathinda. He further pleaded that the land has never been acquired and in fact, Sukhjinder Singh who was employed in Punjab Police has encroached upon certain land and he has filed a suit for possession against him.

The defendant contested the suit and pleaded that the land was acquired vide Notification dated 12.12.1974 followed by a subsequent Notification dated 02.01.1978 issued under the Punjab Town Improvement

Act, 1922, acquiring total area of land measuring 341.79 acres including the land comprised in khasra No.2527 i.e. the land in dispute to the extent of 19 bighas and 2 biswas.

It is further the case of the defendant that the possession of the land was taken. The plaintiff has been paid the compensation to the tune of ₹28,37,346/- on 12.08.1981 and thereafter the land has been utilized for construction of road in September, 2009.

Both the Courts below, after examining the evidence and particularly after taking note of plaintiff's admission to the effect that the land had been acquired and the plaintiff and his brother had received the compensation, dismissed the suit.

Learned counsel for the appellant has alongwith appeal filed a copy of the judgment passed by this Court in the case of **Parkash Singh Vs. State of Punjab etc, in CWP No.869 of 1981** to assert that the acquisition stands abandoned/withdrawn.

Learned counsel for the appellant admitted that this is neither part of the pleadings nor part of evidence led by the plaintiffs before the Courts below. This Court cannot permit the plaintiff-appellant to raise a point or take a new plea which is not only beyond the pleadings and the evidence but also such plea was never raised before the Courts below.

The suit filed by the plaintiff is only for permanent and mandatory injunction. The Courts have found that the road has been constructed. In such circumstances, this Court does not find any good ground to interfere.

It may be noticed that the aforesaid judgment passed by this

Court is in the case of Parkash Singh, whereas the present suit has been filed by Hardam Singh son of Gurdial Singh son of Khushal Singh.

In view of the above, the present Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

09.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No