

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108

RSA No.5310 of 2015 (O&M)

Date of decision: 12.01.2018

Om Parkash

..... Appellant

Versus

Niranjan Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rakesh Bakshi, Advocate
for the appellant.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1-appellant is in regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff filed a suit for mandatory injunction for directing the defendant to hand over the vacant possession of land measuring 48 kanals and also prayed for passing a decree for damages by way of mesne profit. Plaintiff claims that he has purchased the suit land in a public auction on 28.10.1999 but he was deprived of the possession although he is entitled to it. The plaintiff has further pleaded that the defendant-appellant had challenged public auction in his favour before the authorities and failed and the sale in his favour has become final.

Defendant-appellant contested the suit and pleaded that he is 'gair maurusi' tenant under the Gram Panchayat.

Both the Courts after appreciation of evidence available on the file recorded a concurrent finding of fact that it is the plaintiff who is owner of the property pursuant to the sale of property in his favour in a public auction dated 28.10.1999. The Courts have further found that the defendants had challenged the aforesaid public auction and appeal, revision etc. was

dismissed upto the Financial Commissioner.

I have heard learned counsel for the appellant at length and with his able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has submitted that the suit for mandatory injunction was not maintainable and the plaintiff could file a suit for possession only. He has further submitted that the mesne profit as assessed by the Court could not be granted in a suit for mandatory injunction.

I have considered the submission. However, I do not find any merit therein. The plaintiff has no doubt prayed for mandatory injunction but has further prayed that the defendant be directed to hand over the vacant possession of the property. In other words, it is a suit for possession. In any case, once the plaintiff is entitled to possession, the technicalities should not come in his way particularly when he has purchased the property by way of public auction in 1999 and he has been deprived of the possession for the last more than 18 years.

Next argument of learned counsel is that in a suit for mandatory injunction, mesne profit could not be granted. Once the defendants-appellants have been found to be in unauthorized possession of the property without any right, title or interest in the same, the defendants are duty bound to compensate the plaintiff who has been wrongly deprived of the possession during all these years.

In view thereof, there is no scope for interference with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

12.01.2018
Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No