

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

RSA No.5507 of 2015 (O&M)

Date of decision:- 21.02.2018

Ram Kishan and Others .

...Appellants

Versus

Municipal Council, Bhiwani and Others

...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Ramender Chauhan, Advocate,
for the appellants.

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RITU BAHRI J. (Oral)

CM NOs. 13203 and 13204-C of 2015

For the reasons mentioned in the applications, same are allowed and delay of 118 days in refilling the appeal and 02 days in filing the appeal respectively, are condoned.

Accordingly, present applications stands disposed of.

Main Case:

The present appeal has been filed by the appellant against the judgment dated 21.11.2014 passed by the Additional District Judge, Bhiwani and judgment of trial Court dated 24.07.2012, whereby suit filed by the plaintiff (present appellant) for permanent injunction has been dismissed by both the lower courts.

The present suit filed by the plaintiff against the defendant claiming to be hawker/squatter/running small and petty business after putting a Takhat-Kisok of Chat Bhandar in the name of Bhagwat Chat Bhandar in Lohar Bazar, at Bhiwani. It is claimed by the plaintiff that this small open space covered with Tripal was being used by him since 1989. It was contended that initially the area fell within the jurisdiction of Municipal

Committee but later on it has now under Municipal Council, Bhiwani for its maintenance. It was pleaded that plaintiff has been paying 'tehh Bazari' fee to Municipal council, Bhiwani for the site occupied by him from time to time. Receipts issued by the Municipal Committee is also placed on record by the plaintiff. It was acknowledged by the defendant that his right to carry on business from the site in respect whereby 'Tehh Bazari' right has been confirmed upon him. He has been pressurized by the defendant to remove his Takhat (wooden Bench) from the site by using force. Hence, present petition was filed before the trial court in the form of permanent injunction. Plaintiff prayed that the defendant be directed to not to interfere in possession of the plaintiff and proforma defendant in any manner as he is doing a petty business in the open space in the vicinity of Mohalla Lohar Bazar, Bhiwani for the last more than 23 years.

Notice to the said suit was given to the defendant and defendant No.1 appeared and filed his written statement and pleaded that plaintiff cannot claim his right to remain at the site on a 'Tehh Bazari' rather the plaintiff has kept utensils etc. and running a tea stall, chat, shock unauthorizedly, unlawfully by putting a Takhat at the site which is causing inconvenience to the passer by and a large number of the residence in the area. It is further submitted that defendant has taken a valid procedure to evict unauthorized occupant in the vicinity in Mohalla Lohar Bazar, Bhiwani.

From the pleadings of the parties to the suit, the following issues were framed:

- (i) Whether the plaintiff is entitled to the relief of prohibitory injunction as prayed for? OPP

(ii) Whether the suit is bad for want of notice under Section 52 of the Haryana Municipal Act? OPD

(iii) Whether the suit of the plaintiff is not maintainable in the present form? OPD

(iv) Relief.

In support of the case, plaintiff examined Kali Charan as PW1, Surender Kumar Clerk MC, Bhiwani as PW2 and Sunil Kumar LDC as DW3. On the other hand, defendant No.1 was given sufficient opportunities in this case to lead its evidence but he has failed to lead its evidence in this case and lastly evidence was closed by court orders.

On the basis of the evidence produced by both the parties, it is clear from the receipts produced by the plaintiff that these receipts were not issued to the plaintiff as a licensee, rather, the plaintiff was running a chat shop after encroaching a pavement/footpath which has caused a great inconvenience to the passer by and the public at large in the vicinity and trial court dismissed the suit of the plaintiff.

Feeling aggrieved, plaintiff filed the suit before the lower Appellate Court.

Hence, in the opinion of the appellate court, the submission raised by the counsel for the plaintiff do not hold water and accordingly, lower appellate court dismissed the same.

Consequently, appellants filed the present appeal.

Heard. File perused from which it reveals that, plaintiff is a Hawker and running his shop on the public passage/footpath in the property of Municipal Council, Bhiwani. He is also failed to produce any evidence regarding rent -deed or also not filed any receipt to payment of rent.

Since the suit has been rightly been dismissed by both the courts below and no illegality, much less perversity has been pointed out in the judgments of the lower Courts, warranting interference by this Court.

No substantial question of law arises for consideration in this appeal.

Hence, appeal stands dismissed.

21.02.2018
Riya Grover

(RITU BAHRI)
JUDGE

Whether speaking/reasoned *Yes*
Whether reportable *No*