

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

RSA No.1385 of 2018 (O&M)
Date of Decision : 27.07.2018.

Bawa Ram

... Appellant

VERSUS

Khushwant Rai and another

... Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. A.P. Kaushal, Advocate for the appellant.

B.S.WALIA, J. (ORAL)

1. Appeal has been filed by the appellant-plaintiff against the concurrent findings recorded by the learned Courts below dismissing the suit for permanent injunction for restraining the respondents-defendants from dispossessing him illegally and forcibly from the subject matter of the suit property.

2. The learned Civil Judge (Junior Division), Kharar, dismissed the civil suit on the ground that plaintiff had to prove his own case by leading cogent and convincing evidence and could not rely upon the weakness of the opposite party. The learned Civil Judge held that the plaintiff claimed to be owner in possession of the suit property for the past 40 years and of having constructed house on the said land besides planted *safeda* and other trees in the suit property, while the respondents-defendants categorically denied the stand of the appellant-plaintiff and instead took up the stand that the suit property was part of common property of the village which was earlier owned and possessed by the Gram Panchayat and subsequently by the Municipal Corporation, Kharar and that

respondent No.2/Municipal Corporation, Kharar had taken over the possession of the suit property by process of law on 23.11.2010 after issuing notice dated 30.06.2010 Ex.D1 and 20.08.2010 Ex.D2 to the appellant-plaintiff under Section 172-A and 220 of The Punjab Municipal Act, 1911 and that in the aforementioned circumstances it was incumbent upon the appellant-plaintiff to establish that he was owner in possession of the suit property but he had failed to place on record any cogent and convincing evidence to prove that he was owner in possession of the same. Appeal filed by the plaintiff was also dismissed by the learned Addl. District Judge, SAS Nagar.

3. Learned counsel contends that earlier FIR No.64 dated 10.02.2007 was registered against the appellant-plaintiff under Sections 447 and 511 IPC and Section 13(2) of Punjab Village Common Land (Regulation) Act, 1961 but vide judgment dated 27.04.2010, he was acquitted by the Court of the then learned Sub Divisional Judicial Magistrate, Kharar by observing that the prosecution had failed to prove that the land in question was the ownership of the Gram Panchayat. Learned counsel contends that in the circumstances, the finding qua title of the property given by the Court of the learned Sub Divisional Judicial Magistrate, Kharar was binding and the respondents-defendants having failed to establish that the suit property was owned by respondent-defendant No.2, the Courts below had wrongly dismissed the civil suit as also the appeal.

4. Having heard learned counsel for the appellant and perused the paper book, I am of the considered view that the Regular Second

Appeal is bereft of merit, therefore, liable to be dismissed for the reasons as are recorded hereunder.

Despite the suit having been filed with the averments that the appellant-plaintiff was owner in possession of the suit property for the past 40 years and had constructed house on the same and planted *sefada* and other trees, the appellant-plaintiff failed to lead any evidence whatsoever in support thereof. The plea that in FIR No.64 dated 10.02.2007, U/s 447, 511 of IPC and Section 13 (2) of The Punjab Village Common Land (Regulation) Act, 1961, appellant-plaintiff was acquitted vide judgment dated 27.04.2010 on the ground that prosecution had failed to prove that land in question was owned and possessed by the Gram Panchayat, is of no avail, since, it is settled law that finding qua title of property given by a criminal court is not binding on the civil court. It is the appellant-plaintiff who had approached the Court by way of civil suit for seeking relief of permanent injunction and for restraining the respondents-defendants from dispossessing him illegally or forcibly from the suit property on the basis of his lawful possession. In the circumstances, burden of proof was on the appellant-plaintiff to establish his title and lawful possession. However, the appellant-plaintiff failed to place on record any material to prove his ownership of the suit property. Mere assertion by the appellant-plaintiff in his affidavit Ex.PW1/A is not sufficient to prove the case as it is well settled law that mere assertion cannot take the place of evidence.

In order to prove ownership and possession over the suit property, the appellant-plaintiff could have placed on record allotment letter/electricity bill/water bill/ ration card etc. or any similar document but

no such document was placed on record by the appellant-plaintiff to prove his title and possession over the suit property except site Plan Ex.P1. The self contradictory statement of the appellant-plaintiff in his cross-examination further leads to an inference that his claim is not lawful. Appellant-plaintiff who appeared as PW1, in his cross-examination deposed that there were 15-16 *sefada* trees in the suit property, where after he stated that there was no *sefada* trees in the suit property as he had already sold the same but did not know to whom the same were sold and for how much amount. Apellant/plaintiff further stated that he had constructed a house on the suit property besides raising some other construction. However, during cross-examination, the appellant-plaintiff stated that he did not know to whom the suit property belonged to prior to his father but later on, in his cross-examination he deposed that prior to his father, the same was in the possession of his grandfather. However, the appellant failed to produce any proof of title over the suit property to prove that the same was purchased by his forefathers from any person. Accordingly, it is apparent that the appellant-plaintiff did not approach the Court with clean hands therefore, disentitled himself from equitable relief of injunction as it is settled law that in order to obtain discretionary relief, a party has to come to Court with clean hands and suppression of material particulars would disentitle such party from obtaining the equitable relief of injunction as laid down by Hon'ble the Supreme Court in case titled Lourdu Mari David vs. Louis Chinnaya Arogiaswamy, 1996 (5) SCC 589 as also G. Jayashree v. Bhagwandas S. Patel, 2009 (3) SCC 141 and

Mohammedia Coop. Building Society Ltd. vs. Lakshmi Srinivasa Coop. Building Society Ltd. 2008 (7) SCC 310.

5. No other point was raised.
6. Accordingly, in the circumstances, no substantial question of law arises for consideration by this Court nor do the circumstances warrant interference with the well reasoned judgment of the learned Civil Judge (Junior Division), Kharar dismissing the civil suit as well as with the findings of the learned Addl. District Judge, SAS Nagar dismissing the appeal. Accordingly, the appeal is dismissed in *limine*.

(B.S.WALIA)
JUDGE

27.07.2018.
rajesh.k.khurana

Whether speaking/reasoned

Whether reportable

: Yes/No

: Yes/No