

RSA No.1494 of 2018 (O&M)

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

RSA No.1494 of 2018 (O&M)

Date of decision:13.03.2018

Tarun Jawa

... Appellant

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Anubhav Mehrotra, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.3906-C of 2018

For the reasons stated in the application which is duly supported by an affidavit, delay of 166 days in filing the appeal, is condoned.

C.M stands disposed of.

RSA No.1494 of 2018 (O&M)

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of facts and law, whereby, suit for declaration and permanent injunction directing defendant no.2 to remove the road from his land and re-construct the same at the place shown in green colour in demarcation report and site plan, had been dismissed by the trial Court, vide judgment and decree dated 31.07.2013 and upheld by the Lower Appellate Court, vide judgment and decree dated 20.03.2017.

The appellant-plaintiff instituted a suit on the ground that he was recorded as owner in possession of the land to the extent of ½ share of land measuring 384 kanals 2 marlas described in the plaint. PWD B&R department initially constructed the road known as Hansi-Karnal road as there was a steep curve in the road frequent accidents occurred because of blind turning in the road. The road has been running adjoining the land of the plaintiff which in the year 1993 was realigned. At the time of realignment of the road, officers of the PWD department contacted the plaintiff and put forwarded a proposal before the plaintiff for realignment of the road to avoid the accidents which was agreed to, whereby, defendant no.2 proposed to transfer the land underneath the already constructed road in lieu of the new alignment of the road. The plaintiff gave the possession of land for the welfare of public interest and in lieu of ousted land the plaintiff got the possession of the land which was underneath the road earlier and developed the same for agricultural purpose. It was averred that land of the plaintiff was never acquired nor any compensation was paid. The plaintiff alongwith department planted the eucalyptus trees in the land but the Forest Department wanted to take possession of the land illegally and forcibly, therefore, the suit aforementioned was filed.

Defendants no.1 and 2 contested the suit and filed the written statement by taking customary pleas with regard to locus standi, cause of action and maintainability. On merits, it was stated that defendant no.2 had initially constructed the road as Hansi-Karnal road as there was a steep curve in the road but it was denied that defendant offered the proposal to the

plaintiff for transfer of the land underneath the already constructed road. The possession was illegal and unauthorized and without any title.

Defendant no.3 filed separate written statement objected that plaintiff was not owner of the suit land. In fact, ownership of the land lies with PWD B&R Department and it was declared as “Protected Forest” and was transferred to Forest Department for further technical management, vide notification dated 03.03.1972.

The trial Court on the basis of pleadings framed the following issues:-

- “1. Whether plaintiff can be declared to be owner in possession of land shown in the green colour in site plan? OPP*
- 2. Whether defendant no.2 can be directed to remove the road from the land of plaintiff and reconstruct the road? OPP*
- 3. Whether suit of plaintiff is not maintainable in its present form? OPD*
- 4. Whether plaintiff has no cause of action and locus standi to file the present suit? OPD*
- 5. Whether suit of the plaintiff is barred by limitation? OPD*
- 6. Whether suit of the plaintiff is bad for mis-joinder and non-joinder of parties?*
- 7. Relief.”*

Both the parties examined the witnesses at their end.

The trial Court on the basis of evidence found that plaintiff was not owner of the suit and dismissed the suit. The appeal filed before the Lower Appellate Court also met with the same fate.

Mr. Anubhav Mehrotra, learned counsel appearing on behalf of the appellant-plaintiff submitted that both the Courts below have committed illegality and perversity, for, once the department had admitted the construction of road known as Hansi-Karnal road, it is not possible to believe that plaintiff was given land in exchange, therefore, there is abdication. Defendant no.2 had full knowledge of the ownership and possession. No person can be deprived of land until and unless there is proper acquisition as per the provisions of Article 300A of the Constitution of India and thus, urged this Court for setting aside the findings under challenge.

I have heard the learned counsel for the appellant, appraised the impugned judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Mehrotra, Advocate.

The foremost question to be seen by this Court is whether appellant was owner of the land alleged to have been transferred to the Forest Department, answer is in 'negative', for, the appellant-plaintiff had occupied the land on his own and not able to establish the long and settled possession, whereas, the land was transferred way back in the year 1972. No person can be permitted to take forcible possession of the land belonging to Government, nor any exchange or any allotment in lieu of land given for

realignment had been proved nor brought on record. Thus, possession was unauthorized.

As an upshot of my findings, there is no illegality and perversity in the judgments and decrees of both the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 13, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No