

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

**RSA No.4478 of 2018 (O&M)
Date of Decision:30.07.2018**

Deepak BatraAppellant
Vs
Municipal Corporation, Faridabad and another
....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Paramjit Singh Jammu, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in Regular Second Appeal in a suit for permanent injunction decided by the Courts below concurrently whereby suit of the plaintiff was dismissed.

[2]. Brief facts of the case are that the plaintiff filed a suit for permanent injunction restraining the defendants from demolishing the shop and also from interfering in the peaceful possession of the plaintiff/appellant. Plaintiff pleaded in the suit that his father late Sh. Wazir Chand was given a shop-cum-space measuring 14 x 18 ft. in lieu of wooden khokha adjacent to No.1 B.K. Chowks, NIT, Faridabad in the year 1981. The place in question was assured to be allotted to the father of plaintiff in lieu of acquisition of their 56-58 sq. yards of land from residential house for construction of officers' quarters of the

MCF.

[3]. The suit was contested by the defendants. It was submitted that shop No.1 was allotted to Smt. Sheela Devi wife of Wazir Chand, but under the garb of aforesaid allotment, the plaintiff has encroached upon the adjacent land belonging to the defendants in which plaintiff was running some financial service and was in unauthorized occupation. The said encroachment was made by just to grab the land without there being any title and permission to remain on the land. The site in question was on perpetual lease of 82 years vide agreement dated 26.05.1993 and was registered in the office of sub-Registrar. The site in question was never allotted to the plaintiff, nor to his father but the plaintiff has encroached upon the same under the garb of adjacent land being with him on lease.

[4]. Both the parties went to trial on specific issues. Issue No.1 was to the effect that:-

“1. Whether the plaintiff is also entitled to a decree for permanent injunction as prayed for. OPP?”

[5]. Both the parties led their respective evidence to prove their case.

[6]. Both the Courts below have concluded that the plaintiff has to stand on his own legs in a suit for permanent injunction to

restrain the defendants from interfering in the possession of the plaintiff. Plaintiff has to prove his legal possession on the date of filing of the suit.

[7]. I have considered the submission made by learned counsel for the appellant.

[8]. Evidently, the adjoining shop of the suit land was given on lease to Smt. Sheela Devi w/o Wazir Chand. No evidence has been led by the plaintiff to show that the land in question was ever allotted or given on lease to the plaintiff in any manner. The very entry of the plaintiff in the suit property was on account of unlawful means and the plaintiff was a rank trespasser. In **Premji Ratansey Shah vs. Union of India, 1995(3) R.R.R. 11**, the Hon'ble Apex Court has held that injunction is a personal right and the plaintiff has to prove his personal interest in the property. Injunction cannot be issued against the true owner.

[9]. Plaintiff could not lead any evidence to show his title/possessory right in the suit property except to allege that he is in long possession. A person is entitled to injunction if his initially entry is found to be on permissive note and thereafter the possession becomes unauthorized. In the instant case the initial entry of the plaintiff is not found to be permissive by any stretch of imagination and he was not allotted the suit land, nor

the same was ever given to him on lease. A rank trespasser is not entitled to any such protection. The law laid down in **Rama Gowda (D) by LRs vs. Mr. Varadappa Naidu (D) by LRs and Anr., 2004(1) R.C.R. (Civil), 519** was followed in **Subramaniaswamy Temple Ratnagiri vs. Kanna Gounder (dead) by LRs, 2009(3) SCC 306**. The person in unauthorized possession without proving initial entry on permissive note cannot claim injunction against the true owner.

[10]. Both the Courts below have rightly concluded that the plaintiff is not entitled to any injunction being a trespasser on the public property. The findings recorded by the Courts below cannot be held to be perverse or the result of any misreading of evidence. No law point worth cognizance is involved in the present appeal and the same is dismissed in *limine*.

[11]. The application for additional evidence filed along with the appeal has no substance as the prayer is not relatable to claim of the plaintiff to prove that very entry of the plaintiff/appellant in the suit property was lawful. The same is disposed of. All other civil. misc. applications are also disposed of accordingly.

July 30, 2018

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No