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

**RSA No.5387 of 2018 (O&M)
Date of Decision: 15.11.2018**

Roshan Lal

.....Appellant

Vs

**Municipal Council, Thanesar and another
....Respondents**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. R.S. Mamli, Advocate
for the appellant.

Mr. Kuldeep Tiwari, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration and permanent injunction as consequential relief.

[2]. Brief facts of the case are that the plaintiff filed a suit against the Municipal Council, Thanesar with the allegations that mutation entered in the name of defendants in respect of suit property was wrong and the same was not binding on the rights of the plaintiff. Plaintiff also sought restraint from

dispossessing him from the suit property or raising any construction forcibly. Plaintiff claimed himself in possession of the vacant plot situated in Gandhi Nagar, Thanesar having defined dimensions. Plaintiff claimed that he was the co-owner in the Panchayat Deh and was in possession of the plot in question. Defendants have got the mutation sanctioned entered by extending the municipal limits and thereafter they were bent upon to dispossess the plaintiff.

[3]. Defendants contested the suit. At the first instance, defendants claimed that the Municipal Council, Thanesar had purchased the land by dint of registered sale deed. The name of the Municipal Council was duly reflected in the revenue record. Defendants also claimed that the plaintiff has not produced any document of title as well as possession over the suit property. Municipal Council, Thanesar was claimed to be owner of the land in question and the plaintiff filed the suit with an intention to grab the property of the Municipal Council, Thanesar which is lying vacant at the spot.

[4]. Both the parties went to trial on the following issues:-

- “1. *Whether the plaintiff is entitled to decree for declaration as prayed for? OPP*
2. *Whether plaintiff is entitled for decree of permanent injunction as prayed for? OPP*
3. *Whether the suit is not maintainable? OPD*

4. *Whether plaintiff has no locus standi and cause of action to file the present suit? OPD*
5. *Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
6. *Whether the plaintiff has concealed the true and material facts from the Court?OPD*
7. *Relief.”*

[5]. Both the Courts below have dismissed the suit of the plaintiff after appreciation of evidence on record.

[6]. I have considered the submissions made by learned counsel for the parties.

[7]. As per *Jamabandi* for the year 2007-08 Ex.D-1, Municipal Council, Thanesar was shown to be the owner of the suit property. Plaintiff has not produced any document of title as well as possession. Evidently, the land is situated within the municipal limits. Plaintiff has not produced record of Municipal Council showing that the property was ever assessed to house tax by the Municipal Council, nor the plaintiff while appearing as witness has admitted in his cross-examination that there was no electricity meter installed at the spot and he has not paid any house tax in respect of suit property. No electric connection was released in the name of the plaintiff. The documents Mark 'A' to Mark 'C' produced by the plaintiff besides producing the site plan Ex.P-1 did not advance the case of the plaintiff in respect of proving any title, even though the complaints filed by the

defendants was dismissed on 02.03.2009. The said fact coupled with the photographs produced by the plaintiff and site plan were not sufficient to prove title in favour of the plaintiff.

[8]. Both the Courts below on the basis of aforesaid evidence found that the plaintiff has miserably failed to prove his title of ownership as well as possession. On the basis of aforesaid appreciation on evidence, re-appreciation by this Court cannot be done as no question of law worth consideration is involved in the present appeal. The findings recorded by the Courts below cannot be said to be the result of misreading of evidence or suffered with any perversity.

[9]. Along with the present appeal, appellant has also preferred an application i.e. CM No.15873-C of 2018 seeking to produce additional evidence in the form of electricity bill, Jamabandi prior to the year 1999 and copy of mutation.

[10]. On due consideration, it is found that the electricity bill which is sought to be produced as additional evidence is beyond the stand taken by the plaintiff/appellant before the Courts below while appearing as plaintiff. The stand of the plaintiff was so categorical that there was no electricity meter installed at the spot. When there was no electricity meter installed at the spot, question of issuing any electricity bill does

not arise. In view of above documents Annexures A-1 to A-3 sought to be produced as additional evidence cannot be taken into consideration at the stage of regular second appeal.

[11]. Perusal of document Annexure A-4 would show that *Shamlat Deh Hasab Rasad Jar Khevat* was recorded in the column No.4, whereas in the column of cultivation *Khud kast and Makbuja Malkan* was recorded. Name of the plaintiff/appellant was not recorded in the individual position in any revenue record sought to be produced by way of additional evidence. The entry of *Shamlat Deh Hasab Rasad Jar Khevat* is relatable to the status of a person in possession of land as on 26.01.1950. In the column of the cultivation, entry of *Khud Kast and Makbuja Malkan* would show that the person in possession has to establish his individual possession as on 26.01.1950 in order to bring out the land from the ambit of Section 2'g' of the Punjab Village Common Lands (Regulation) Act 1961.

[12]. The cumulative effect, on consideration of the application under Order 41 Rule 27 CPC would not be in favour of the plaintiff to advance any of consideration in his favour.

[13]. In view of aforesaid, the present appeal is found to be totally devoid of merits. No question of law worth consideration is involved in this appeal. The appeal along with the application

for additional evidence i.e. CM No.15873-C of 2018 is accordingly dismissed. All other civil misc. applications, if any, are accordingly disposed of.

November 15, 2018

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No