

128

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

RSA No. 6428 of 2017 (O&M)
Date of Decision: 24.08.2018

Municipal Corporation, Jalandhar

....Appellant

Vs

Kashmiri Lal and another

.....Respondents

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

Present: Mr. H.K. Aurora, Advocate,
for the appellant.

RAJ MOHAN SINGH, J.(Oral)

1. Defendant is in regular second appeal in a suit for permanent injunction filed by the plaintiffs.
2. Plaintiffs claimed themselves to be owners in possession of the suit land since 1982. Earlier to that, their ancestors were in possession of the same. Plaintiffs have renovated the house and even got electric connection in the said house. The suit property is situated within lal dora and the Municipal Corporation has nothing to do with the suit property.
3. The claim of the plaintiffs was contested by the Municipal Corporation by claiming that the land is not within lal dora, rather the same is shown in the revenue record in the name of Municipal Corporation. Plaintiffs sought to grab the land

under the garb of permanent injunction and no notice under Section 396 of the Act was issued to the Municipal Corporation. The Municipal Corporation also pleaded that the Corporation has a right to get the suit property vacated from the encroachment.

4. While deciding issues No.1,3,5 and 7 jointly, the trial Court with reference to the evidence on record found that the defendant has admitted possession of the plaintiffs over the suit property though the same is claimed to be illegal. A suggestion was given to the plaintiffs witnesses namely Chhindo-PW1 and Nirmaljeet Singh-PW2 and the possession of the plaintiffs was admitted by way of putting suggestions to the plaintiffs witnesses to the effect that the plaintiffs are in illegal possession of the suit property.

5. On the basis of oral testimonies of PW1 to PW3 coupled with documentary evidence Ex.P2 to Ex.P9, trial Court found the possession of the plaintiffs over the suit property as a fact. Even the defendant witnesses i.e.DW1 and DW2 admitted the possession of the plaintiffs in their cross-examinations.

6. DW1 in his cross-examination has clearly stated that he cannot tell the Khasra number in which suit property falls. He admitted that on the southern side of the house of the plaintiffs, there is another house and he even admitted that plaintiffs are

in possession of the suit property measuring 72 feet x 60 feet.

DW2 also conceded that abadi area of the village falls under lal lakeer besides admitting possession of the plaintiffs over the suit property.

7. The trial Court has also observed that in a suit for injunction, there is no necessity of issuing notice under Section 396 of the Municipal Corporation Act.

8. Both the Courts below have found that the plaintiffs can only be ejected in due course of law. The findings recorded by both the Courts below are based on proper appreciation of evidence. The findings are neither perverse nor the same are on account of mis-reading of evidence.

9. No lawful point worth consideration is involved in the present appeal.

10. This regular second appeal is accordingly, dismissed in limine.

24.08.2018
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No