

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.716 of 2018 (O&M)
Date of Decision.23.05.2018

Om Parkash

.....Appellant

Vs

Municipal Corporation, Gurgaon

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Mani Ram Verma, Advocate
for the appellant.

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AMIT RAWAL J.(ORAL)

The appellant-plaintiff is aggrieved of the concurrent finding of fact whereby the suit for declaration and permanent injunction claiming himself to be owner in possession of the suit land situated within the *abadi* of village Fazilpur Jharsa by way of allotment to his father by the Ministry of Rehabilitation of the Displaced Person and consequential relief permanent injunction for restraining defendant No.1 from causing disturbance in the peaceful possession and forcible dispossession, has been dismissed by the trial Court and affirmed by the lower Appellate Court.

The aforementioned suit was based upon the pleadings that father of the plaintiff was shifted from Pakistan and since then he did not possess any property and was in occupation of the land belonging to the Gram Panchayat. Owing to the ill-will between the plaintiff and the Sarpanch of the erstwhile Gram Panchayat, an attempt was made to interfere into peaceful possession of the plaintiff and even the boundary wall was demolished.

The aforementioned suit was contested by the defendant

on the premise that the suit was bad for want of notice under Section 389 of the Haryana Municipal Corporation Act, 1994 owing to the merger of the Gram Panchayat in the Municipal Corporation, Gurgaon, much less, maintainability of the suit under Section 41 (h) of the Specific Relief Act. On merits, it was denied that plaintiff was ever in possession of the land or was ever allotted any land by the Ministry of Rehabilitation rather it was averred that the plaintiff had unauthorizedly encroached upon the suit property in khasra No.88 of the said village.

Mr. Mani Ram Verma, learned counsel appearing on behalf of the appellant submitted that on the basis of the aforementioned pleadings, the plaintiff brought on record umpteen number of documentary evidence from PW-5/1 to PW-7/A, Ex.P1, P2, PX and Mark PY and examined nine witnesses in support of the evidence whereas the defendant also examined one witness and brought on record Ex.DA, DB, DC, D1 to D5.

The trial Court misread the documentary evidence brought on record, particularly the Resolution of the Gram Panchayat vide which it was unanimously agreed to allot the land at the market price but the same was not acted upon and in the meantime, the property vested in the Municipal Corporation, thus, urges this Court for setting aside the judgments and decrees under challenge.

Even if the plaintiff had failed to make out case of declaration, injunction should have been granted to him on the basis of long and settled possession.

I have heard learned counsel for the appellant, appraised

the paper book and of the view that there is no force and merit in the submissions of Mr. Verma, for, the appellant-plaintiff has not been able to place on record any evidence regarding the allotment of the suit land. During the course of hearing, Mr. Verma also pointed out that as per the demarcation report placed on record regarding khasra No.88, the Municipal Corporation, Gurgaon has not been shown in ownership of the suit property. Be that as it may, in case any proceedings are initiated by the Municipal Corporation Gurgaon, the appellant-plaintiff will be at liberty to take all possible defence qua title of the Municipal Corporation but not in the manner and mode by filing the suit for declaration as the suit was specifically barred under Section 41(h) of the Specific Relief Act. Vis-à-vis grant of injunction, the plaintiff has miserably failed to prove on record long and settled possession over the suit property. No khasra girdawari or jamabandi had been placed on record to establish the long and settled possession for the purpose of granting injunction.

In view of the aforementioned observations, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below as the same are based upon correct appreciation of fact and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 23, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No