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

**RSA-1795-2016 (O&M)
Date of decision : 12.03.2019**

Municipal Corporation, Gurgaon

... Appellant

Versus

Jaswant Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Lokesh Sinhal, Advocate
for the appellant.

Mr. R.S. Hooda, Advocate
for the applicant in CM Nos.10215 and 10216-C of 2017.

AMIT RAWAL, J. (ORAL)

CM-4843-C-2016

For the reasons stated in the application, which is supported by
an affidavit, delay of 48 days in refiling the appeal is condoned.

CM stands disposed of.

CM-4844-C-2016

For the reasons stated in the application, which is supported by
an affidavit, delay of 02 days in filing the appeal is condoned.

CM stands disposed of.

MAIN CASE

The appellant-defendant is in regular second appeal against the
judgment and decree of the lower Appellate Court dated 19.08.2015,

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whereby the suit of the respondents-plaintiffs for permanent injunction, dismissed by the trial Court, has been decreed and the injunction has been granted qua forcible interference and dispossession except in due course of law.

The plaintiffs sought the injunction, aforementioned, on the premise that they were in possession of the land measuring 17 biswas comprised in Khewat No.165, Khata No.205, Rect. No.762, Killa No.4(0-17), on the basis of the jamabandi and other land measuring 10 biswa comprised in Khewat No.219, Khata No.335, Rect. No.762, Killa No.4/1 (0-5), 6 (0-5), on the basis of the judgment and decree dated 16.12.2002, against the erstwhile Gram Panchayat Nathupur and had raised the construction about 20 years back. Since there was apprehension of forcible interference and dispossession, sought the indulgence of the Court.

The defendant opposed the suit and alleged that the suit land was acquired by relying upon the notification under Section 4 of the Land Acquisition Act.

The plaintiffs in support of the pleadings examined Jaswant Singh as PW1 and brought on record Ex.P1 to Ex.P10/1, whereas the defendant examined Ajit Singh as DW1 and tendered in evidence Ex.D1 and Ex.D2.

The trial Court dismissed the suit, but the lower Appellate Court, as noticed above, reversed it.

Mr. Lokesh Sinhal, learned counsel appearing on behalf of the appellant-defendant submitted that during the pendency of the appeal, on receipt of the application for additional evidence, preferred by the plaintiffs,

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jamabandi reflected that khasra number mentioned in the notification under Section 4 of the Land Acquisition Act, was not part of Section 6 of the Land Acquisition Act. In such circumstances, the lower Appellate Court protected the possession, except in due course of law, but the fact of the matter is that the judgment and decree relied upon by the plaintiffs was *ex parte*. The Municipal Committee, Gurgaon, owing to the vesting of the land, is in custodian ownership, therefore, there is abdication and illegality.

I have heard learned counsel for the parties, appraised the paper book and of the view that the injunction granted, as noticed above, is most innocuous, for, the defendant has been restrained from forcible interference and demolition except in '**Due Course of Law**'. The long and settled possession of the plaintiffs, on the basis of the documentary evidence, i.e. jamabandi spanning from 1956 to 2006, is the testimony of the same. It is a settled law that a person, who is in long and settled possession, cannot be dispossessed except in due course of law. If at all, the defendant was aggrieved of the *ex parte* judgment and decree, were/are at liberty to challenge the same in an independent suit or counter claim.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the judgment and decree of the lower Appellate Court, much less, no substantial question of law arises for determination. No ground is made out for interference.

Resultantly, the present second appeal is dismissed.

CM Nos.10215 and 10216-C of 2017

Learned counsel for the applicant seeks liberty of this Court to withdraw the applications with liberty to avail alternative remedy in

accordance with law.

Ordered accordingly.

12.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**