

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

236

RSA-192-2016 (O&M)

Date of decision: 11.09.2019

RAM CHAND (DECEASED) THR LRS

... Appellants

Versus

MUNICIPAL COMMITTEE HATHIN AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Keshav P. Singh, Advocate for the appellant.
Mr. Lokesh Sinhal, Advocate for respondent No.1.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against judgment and decree dated 26.5.2015 passed by the District Judge, Palwal whereby appeal against judgment and decree dated 30.07.2014 passed by the Civil Judge, (Jr. Div.), Hathin has been allowed, judgment and decree impugned was set aside and suit filed by the appellants/plaintiffs for grant of permanent injunction was dismissed.

Counsel for the appellants would argue that the plaintiffs filed suit for permanent injunction restraining the respondent/defendant from interfering in their lawful possession of suit land with the averments that they are in possession of the suit property since 1960 from the time of consolidation. It is further submitted that the trial Court rightly decreed suit of the plaintiffs whereby the respondent/defendant was restrained from interfering in possession of the plaintiffs except in due course of law. The Court in appeal without correctly appreciating the provisions of Section 52 of the Haryana Municipal Act, 1973 (in short 'the Act') has wrongly held that suit could not be filed without issuance of notice in compliance with the aforesaid provision of the Act. It is further argued that an exception has been created under Section 52 that the said provision would not be applicable to suits filed under Section 38 of the Specific Relief Act, 1963, therefore, non-issuance of notice cannot stand in the way of appellants to maintain a suit for injunction.

Counsel representing the respondent, on the contrary, has supported the judgment and decree passed by the first appellate Court.

Be that as it may, counsel for the respondent has not disputed the factum of appellants being in possession of suit land. He has fairly informed that respondent-Municipal Committee has already initiated proceedings under the Public Premises Act for eviction of the appellants from the suit land. Perusal of Section 52 of the Act makes it evident that the same is not attracted in a suit filed under Section 38 of the Specific Relief Act, 1963. That being so, findings of the first appellate Court in respect of non-maintainability of the suit for want of notice under Section 52 of the Act is the result of its failure to examine the said provision in right perspective. Since the appellants are in possession of suit land and the respondent is trying to recover its possession by taking recourse to law, the appellants are entitle to injunction restraining the respondent/defendant from interfering in possession of the plaintiffs over the suit land except in due course of law. In this view of the matter, judgment and decree passed by the first appellate Court cannot be allowed to sustain and is accordingly set aside.

In view of what has been discussed hereinbefore, appeal filed by the appellants is allowed, judgment and decree passed by the first appellate Court is set aside and suit filed by the appellants for grant of injunction is decreed to the effect that the respondent shall not dispossess the plaintiffs from suit land except in due course of law. In the peculiar circumstances, the parties are left to bear their own costs.

11.09.2019

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(REKHA MITTAL)**JUDGE**

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No