

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

RSA No.4067 of 2016 (O&M)
Date of decision : 19.03.2019

Mahipal Singh

...Appellant

Versus

Gugan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.R. Yadav, Advocate for the appellant.

Mr. Munish Gupta, Advocate for respondent No.2.

ANIL KSHETARPAL, J. (ORAL)

CM No.10474-C of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 61 days in filing the present appeal is condoned.

Application is allowed.

CM No.3489-C of 2019

For the reasons stated in the application, which is duly supported by an affidavit, legal heirs of respondent No.1-Gugan as mentioned in para 3 of the application are ordered to be brought on record, for the purpose of prosecuting the present appeal.

Application is allowed.

Main case

Plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below while dismissing the suit for injunction filed by the plaintiff claiming that the defendants be restrained from interfering in his peaceful possession of land comprised in khasra No.1049 measuring 2 marlas. It is claimed that the land was allotted to him for a manure pit.

Defendant No.1 contested the suit and pleaded that there was no allotment in favour of the plaintiff. Gram Panchayat was also added party defendant and the Gram Panchayat also alleged that there was no allotment.

Both the Courts have found that the plaintiff has failed to produce allotment in his favour. As per the revenue record, the property is owned by the Gram Panchayat and is being used by the residence of the village.

Learned counsel for the appellant submitted that the Gram Panchayat had issued him notice alleging illegal possession. Hence, he submitted that the possession of the plaintiff is established on the record and, therefore, he is entitled to injunction.

This Court has considered submissions.

Once it is established on the file that the plaintiff is not the allottee of the property and it is being used for common purposes, unauthorized possession, if any thereof, cannot be prolonged by granting injunction in favour of unauthorized occupant. If such injunctions are granted, it would encourage the encroachers to enter into unauthorized occupation and thereafter seek protection of the Court.

Still further, plaintiff had come to the Court by claiming that he was allotted the land which he admittedly has failed to prove. The land is being used for common purpose of the residents and, therefore, the plaintiff has no equity in his favour. The injunction being equitable relief cannot be granted in favour of someone who alleges that he is in unauthorized occupation.

Still further, plaintiff has also failed to prove his possession.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by the Courts below .

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

19.03.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No