

In the High Court of Punjab and Haryana at Chandigarh

RSA- 465 of 2018 (O&M)
Date of Decision:10.12.2019

Mohammad Rafik

---Appellant

vs.

Haryana Wakf Board and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Yashjot S.Dhaliwal, Advocate
for Mr. K.S.Dhaliwal, Advocate
for the appellant

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit for permanent injunction restraining the defendants from interfering in peaceful possession of plaintiff over house land measuring 280 square yards marked by letter 'ABCD' shown in red colour in the site plan, was dismissed by the trial court vide decree and judgment dated 19.3.2014 that came to be affirmed in appeal by the Additional District Judge, Panipat.

In brief, case of the appellant is that father of the appellant along with his family members including the plaintiff was residing in village Sewah. On 30.11.1985, a panchayati compromise between gram panchayat Sewah and Kadimi Musalman regarding opening of a girls school

over land of Kadimi Musalman had taken place. Land comprising khasra Nos. 286 (5 kanal 5 marlas) and No. 289 (4 kanal 12 marlas) of Kadimi Musalman was taken by gram panchayat and land comprised in khasra No. 49/4 (4-0), 49/7 (5-17) owned by gram panchayat was given to Kadimi Musalman of the village and they became owners in possession of said land, earlier owned by gram panchayat. The appellant raised construction of his house over the said land and planted some trees there. He applied for electricity connection for his house. He is owner in possession of the suit property and living there for the past about 26 years.

Counsel for the appellant would argue that the courts have committed a gross error rather illegality by rejecting claim of the appellant against his forcible dispossession from the suit property. It is argued that gram panchayat-defendant No. 2 through its member Satbir Singh filed the written statement and admitted the averments contained in para 1 and 2 of the plaint, therefore, no further evidence was required to be adduced by the appellant to establish his claim for grant of permanent injunction being owner in possession of the suit land which is a part of khasra No. 49/4 and 49/7.

I have heard counsel for the appellant, perused the paper book and copies of documents supplied during the course of hearing.

Counsel for the appellant has failed to point out any materials on record that land comprised in khasra Nos. 286 and 289 was ownership of Kadimi Musalman and it was given in exchange to the gram panchayat. He (appellant) has failed to prove any panchayati compromise dated 30.11.1985, in accordance with law. On the contrary, perusal of jamabandi

for the year 2004-05 would reveal that land comprised in khasra No. 286 and 289 is owned by Punjab Wakf Board, Ambala Chhawani, in possession of Ahle Islam. That being so, contention raised by the appellant claiming himself to be owner in possession of suit land has no legs to stand and has rightly been rejected by the courts.

The suit property has been detailed in site plan appended with the plaint. The Court in Appeal has held that the site plan is neither marked in the statement of appellant nor the same has been proved, in accordance with law. Counsel for the appellant has not disputed correctness of these factual findings. That being so, the appellant has even failed to establish identity of the suit property much less the same being part of khasra No. 49/4 or/and 49/7.

Counsel has sought to rely upon the written statement filed by gram panchayat Sewah through its member Satbir Singh. He has not submitted that any document authorizing Sh. Satbir Singh to file the written statement on behalf of gram panchayat is a part of records. This apart, in para 3 of the plaint, the appellant had raised averments with regard to invasion upon his right to enjoy possession of suit property by pleading that defendants are strong persons and they have formed an unlawful assembly and threatened to dispossess the plaintiff from the land in question. On 4.5.2011, defendants appeared over the suit property and tried to dispossess the plaintiff but due to intervention of some respectables, they could not succeed. Both the defendants in the suit are statutory/elected bodies. One is Haryana Wakf Board and the other is gram panchyat Sewah. Nothing has been mentioned in para 3 as to who on behalf of defendants formed an

unlawful assembly to dispossess the plaintiff in order to give him a cause of grievance to express. It appears that suit has been filed by the plaintiff to create right through process of the court but without any cause of action having accrued in his favour. Analyzed from any angle, I do not find an error much less illegality in the judgments impugned that would call for intervention.

For the foregoing reasons, the appeal fails and is dismissed in limine.

(Rekha Mittal)
Judge

10.12.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No