

In the High Court of Punjab and Haryana at Chandigarh

**RSA No. 4909 of 1999 O&M)
Date of Decision:11.2.2020**

Ram Kirpal (since deceased) through Lrs.

---Appellant

vs.

Municipal Committee Narnaul and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Santosh Sharma, Advocate
for the appellants

Ms. Nupur Chaudhary, Advocate
for respondents No. 1 and 2

Rekha Mittal, J.

Two civil suits titled “Ram Kirpal vs. Municipal Committee, Narnaul and others” and “Murti Sh. Guga Devata Installed in temple Sh. Guga Devata vs. Municipal Committee Narnaul” were decided vide common judgment and decree dated 6.10.1992 passed by the Senior Sub Judge, Narnaul (hereinafter referred to as the trial court”).

The property in dispute is the site measuring 394/1/4 square yards situated in Municipal area Narnaul and bounded by Municipal roads and streets on four sides. The appellant-plaintiff staked his right to the suit property by asserting that it was inherited by him from his forefathers. He is owner and in possession of the site in dispute. The municipal committee at the instance of his adversaries intended to remove stones and fodder

belonging to him lying in the suit land and forcibly dispossess him therefrom. He sought permanent injunction restraining the respondents-defendants from removing stones, fodder and interfering in his possession over the land in dispute.

The trial court dismissed the suit vide judgment and decree dated 6.10.1992 that came to be affirmed in appeal by the Additional District Judge-I, Narnaul.

Counsel for the appellant would argue that grandfather of appellant submitted site plan for raising constructions over the site in dispute but the same was not sanctioned by Municipal Committee, Narnaul for illegal reasons. It is further argued that as the site in dispute belongs to forefathers of appellant-plaintiff and respondents wanted to interfere in his possession over the site in question, the courts wrongly negated his claim for grant of permanent injunction, as prayed for.

Counsel representing the respondent-municipal committee, Narnaul, on the contrary, has supported concurrent findings recorded by the courts with the submission that appellant failed to lead even an iota of evidence to establish ownership of his forefathers. It is argued that nothing has been pleaded as to on what basis the appellant claimed title to the suit property which was an open site at the time of institution of suit way back in the year 1984. It is vehemently argued that since the appellant failed to substantiate his plea with regard to ownership of the site in dispute, he has rightly been non-suited with regard to his claim of possession of open site or entitlement to relief of permanent injunction.

With regard to site plan pressed into service by the appellant, it

is argued that appellant examined document expert (DW6) and he submitted the report that name of grandfather of the appellant appearing on the site plan has been added later.

I have heard counsel for the parties, perused the paper book and records.

Counsel for the appellant has failed to point out any materials on record to prove that any construction was existing at the site in dispute at the time of institution of suit in the year 1984, therefore, it can be safely construed that site in dispute was an open plot in regard whereof the appellant asserted his claim of ownership and possession for seeking equitable and discretionary relief of permanent injunction. Counsel for the appellant has not disputed that in respect of an open plot, possession goes with ownership. He has also failed to point out any evidence on record to establish that site in dispute was owned by his forefathers as such, appellant cannot assert his right of having become owner of the suit property by way of succession. No sooner, plea of the appellant with regard to ownership of the site in question is negated, he possibly can neither claim himself to be in possession of the site in dispute nor entitle to injunction.

Assuming that grandfather of the appellant submitted a site plan for raising construction over the site in dispute, the same would not confer a title qua the site in dispute either in favour of his grand father or his successors in interest. In this view of the matter, I find myself unable to accept contention of the appellant that consistent findings recorded by the courts suffer from an error much less perversity that would call for intervention.

For the foregoing reasons, finding no merit, the appeal fails and
is accordingly dismissed with costs.

(Rekha Mittal)
Judge

11.2.2020
paramjit

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