

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3902 of 2023(O&M)
Date of Decision: 14.07.2023

Vishal Rathee

...Petitioner

Versus

Municipal Council, Sohna

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Amit Jain, Sr. Advocate with
Mr. Chetan Slathia, Advocate
For the petitioner.

KARAMJIT SINGH, J.

1. This revision petition has been filed by the petitioner/ plaintiff against the order dated 26.05.2023 (Annexure P-3) passed by the Court of Civil Judge(Jr.Divn.), Sohna whereby the application of the petitioner filed under Order 14 Rule 5 CPC for striking off issue No.1, has been dismissed.

2. The brief facts of the case are that the petitioner/ plaintiff has filed suit for permanent injunction restraining the respondent/ defendant from demolishing the construction raised by the petitioner/ plaintiff in the suit property.

3. The suit has been contested by respondent/ defendant Municipal Council by filing written statement. On completion of pleadings, the learned trial Court framed various issues including issue No.1 which is as follows:-

“1. Whether the plaintiff is owner in possession in suit property? OPP”

4. Being aggrieved petitioner/ plaintiff filed an application under Order 14 Rule 5 for striking the aforesaid issue. The said application was dismissed by the learned trial Court vide order dated 26.05.2023, which is under challenge in the present revision petition.

5. The counsel for the petitioner submits that the suit filed by the petitioner is simpliciter suit for permanent injunction and as such there is no need to adjudicate the question of title in the suit by the trial Court in the light of the ratio laid down by the Hon'ble Supreme Court in **Anthula Sudhakar Vs. P. Buchi Reddy (dead) by LRs & Ors. (2008) 4 SCC 594**, wherein it was held that if a plaintiff is in lawful or peaceful possession of the property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. That in such a civil suit the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession. As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue and the prayer for injunction will be decided with reference to the finding on possession.

6. The counsel for the petitioner further submits that the suit for permanent injunction filed by the petitioner/ plaintiff is also based on possession and thus there was no need for the trial Court to frame issue with regard to title of the suit property and the said issue requires to be struck off.

7. I have considered the submissions made by the counsel for the petitioner.

8. From the perusal of the copy of plaint it is evident that petitioner has specifically pleaded that he is owner in possession of the suit property. However, his title over the suit property has been disputed by the respondent/ defendant. In the given circumstances, the learned trial Court rightly framed issue No.1 with regard to ownership and possession of the plaintiff over the suit property. So, there is no illegality or infirmity in the impugned order

9. However, in the light of the law laid down by Hon'ble Apex Court in P. Buchi Reddy's case (supra) and in order to safeguard the rights of petitioner/ plaintiff, the learned trial Court is directed to frame the following additional issue:-

“1-A If issue No.1 with regard to ownership is not proved, whether the plaintiff is entitled to grant of decree of permanent injunction, as prayed for? OPP”

10. Further if the counsel for the plaintiff gives any statement in the trial Court restricting his claim only on the basis of possession over the suit property, in that case the question of title is to be examined by the said Court incidental to the question of possession.

11. The present revision petition is hereby disposed of in aforesaid terms.

14.07.2023

Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No