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

**RSA-1885-2018 (O&M)  
Reserved on : 16.01.2023  
Date of decision : 24.01.2023**

Vijay Kumar and Ors.

.....Appellants

Versus

Municipal Council, Banga

.....Respondent

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Krishan Sehajpal, Advocate for the appellants.

**ALKA SARIN, J.**

The present regular second appeal has been preferred by the plaintiff-appellants against the judgments and decrees passed by both the Courts below.

The brief facts relevant to the present *lis* are that the plaintiff-appellants had filed a suit for declaration to the effect that the plaintiff-appellants are owners in possession of the property as described in the plaint as also challenging the notices dated 17.05.2011 and 20.05.2011 issued by the defendant-respondent (Municipal Council, Banga) being illegal null and void and consequential relief of permanent injunction restraining the defendant-respondent from interfering in the possession of the plaintiff-appellants. The plaintiff-appellants averred in the plaint that the suit property was their ancestral property having been inherited from their forefathers by means of survivorship and that the plaintiff-appellants raised a boundary wall around the suit property and were in exclusive possession of the same

and that the defendant-respondent had no right or title and that they served notices dated 17.05.2011 and 20.05.2011 threatening to dispossess them from the suit property forcibly and illegally. The suit was contested by the defendant-respondent who denied that the suit property was ancestral in nature. It was further stated that a notice under Section 172/1/A of the Punjab Municipal Act, 1911 had been issued for removal of the illegal encroachment and instead of removing the encroachment the present suit had been filed.

On the basis of the pleadings of the parties, the following issues were framed :

- I. Whether the plaintiffs are entitled to declaration as prayed for ? OPP
- II. Whether the plaintiffs are entitled to permanent injunction as prayed for ? OPP
- III. Whether the plaintiffs have no locus standi and cause of action to file the suit ? OPD
- IV. Whether the suit is not maintainable in the present form ? OPD
- V. Whether the plaintiffs have not come to the court with clean hands ? OPD
- VI. Relief.

The Trial Court, vide judgment and decree dated 28.07.2015, partly decreed the suit restraining the defendant-respondent from dispossessing the plaintiff-appellants from the suit property except in due process of law. However, the suit qua declaration that the plaintiff-appellants were owners in possession was dismissed. Aggrieved by the judgment and decree dated 28.07.2015, both the plaintiff-appellants and the defendant-respondent preferred the appeals. However, both the appeals were dismissed

by the lower Appellate Court vide judgment and decree dated 08.01.2016.

The present regular second appeal has been preferred only by the plaintiff-appellants.

Learned counsel for the plaintiff-appellants would contend that the plaintiff-appellants are owners in possession of the suit property having inherited the same from their forefathers and that the notices issued by the defendant-respondent were illegal, null and void. Learned counsel for the plaintiff-appellants would further contend that both the Courts below have misread the evidence on the record and that their suit ought to have been decreed in toto.

Heard.

In the present case though the plaintiff-appellants had approached the Court claiming themselves to being owners in possession over the suit property on the ground that the same had been inherited by them from their forefathers. However, not an iota of evidence was led in support of the said claim. Rather, in the cross-examination of PW1 Vijay Kumar it was admitted by him that he had no sale deed nor any other proof of ownership over the suit property and that the plaintiff-appellants were not in possession of any proof of ownership of their forefathers. Even PW2 Davinder Kumar admitted that he had not seen any title deed or any proof of ownership regarding the suit property with the plaintiff-appellants. In view of the fact that there is not an iota of evidence on the record to prove the ownership of the plaintiff-appellants over the suit property, the suit qua declaration that they were owners of the suit property was rightly dismissed. A lame argument was put up that since the defendant-respondent had issued the impugned notices to the plaintiff-appellant their ownership over the suit

property was established. This submission is being noted only to be rejected. A plaintiff has to stand on his own legs and prove his case by leading cogent evidence which has not been done in the present case. Moreover, mere issuance of notices by the defendant-respondent to the plaintiff-appellants would not bestow them with title over the suit property. It was also noticed by the Trial Court that PW1 Vijay Kumar had admitted that even with the defendant-respondent he was not recorded as owner.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by both the Courts below. No question of law, much less any substantial question of law, arises for determination in the present case. The present appeal, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

**24.01.2023**  
Yogesh Sharma

**( ALKA SARIN )**  
**JUDGE**

NOTE : Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO