

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

**RSA-601-2022 (O&M)
Date of decision: 19.04.2023**

MUNICIPAL COMMITTEE ROOP NAGARAppellant

VS

GOVERNMENT COLLEGE ROPAR AND ORS ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Neeraj Sharma, Advocate,
For the appellant.

ARUN MONGA, J. (ORAL)

CM-1770-C-2022

For the reasons stated in application, same is allowed and delay of 55 days in re-filing the appeal stands condoned, subject to all just exceptions.

Main case

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, defendant No.5 is in second appeal before this Court assailing learned trial Court judgment and decree dated 21.11.2013, as upheld by learned First Appellate Court vide its judgment and decree dated 19.08.2019, partly decreeing the suit filed by respondent No.1 herein/plaintiff to the extent that plaintiff, being in exclusive possession over the suit property, was held entitled to relief of permanent injunction restraining defendants from

interfering into the peaceful possession and from dispossessing plaintiff out of the suit property forcibly and illegally and from interfering in any manner into the activities of sports of plaintiff college and also from raising any sort of construction, alienating and changing the nature of the suit property. Plaintiff was also held entitled to relief of declaration to the extent that alleged mutation, which was challenged by plaintiff in the suit, was liable to be set aside being illegal, null and void.

3. Briefly stated, facts as noticed by Courts below, are as under:

“The brief facts of the case are that the instant suit is filed by the plaintiff College through its Principal who is competent to file the present suit and to take legal action to protect the suit property. The suit property over which the Government College building has been constructed, also consists of playgrounds, hostel building, cycle stand et cetera and the same is in the peaceful and continuous possession of the plaintiff since the inception of the College i.e. 06/06/1945. Since the date of its inception, plaintiff is enjoying the peaceful and continuous possession of the suit property without any interruption, objection from any side including the defendants.

It was also averred that the plaintiff College is recognized by the UGC and is well-known to the world at large for its quality education and sports activities. The grievance of the plaintiff is that the entries in the revenue record regarding the ownership of the suit land remained in the name of the Central government as the land was acquired by the Central government for the purpose of the government College. Since last more than 60 years the plaintiff had been in the peaceful possession of the suit land. Referring to a civil writ petition filed by one M. Ali Khan against the Union of India, wherein the plaintiff was also impleaded as party, there the plaintiff had described itself as owner and in possession of the suit land. The said civil writ petition was dismissed by the High Court. In this way the defendants were estopped from their own act and conduct to claim the right and title over the suit property. Besides it was also averred in the plaint that the government College was maintained with the funds released by the Punjab government from time to time. Out of the suit land measuring 57 Kanals 5 Marla, the defendant number 5 i.e., the Municipal Council Ropar, had illegally connived with the State of Punjab which wrongly transferred this land to defendant number 5 at the back of the plaintiff with malafide intention and when the plaintiff came to know about the same, the plaintiff had filed the objections before the Revenue Authority.”

4. Upon notice, defendants No.1 to 4 did not appear and were accordingly proceeded against *ex parte*. However, defendant No.5 appeared and filed written statement taking preliminary objections on the grounds of maintainability, locus standi, barred by limitation etc.,

4.1 Besides, defendant No.5 also denied the ownership/possession of plaintiff/respondent No.1 herein over the said playground. Defendant No.5 admitted that the suit property was owned by Central Government but denied that it was ever transferred to Government College. All other averments were also denied.

5. Replication was not filed. Based on rival pleadings, following issues were framed:

1. *“Whether the plaintiff is exclusive owner and in possession of the property in dispute and whether the mutation dated 05/11/1988 is illegal null and void? OPP*
2. *Whether the plaintiff is entitled to declaration and injunction as prayed for ? OPP*
3. *Whether the suit is not maintainable in the present form? OPD*
4. *Whether the suit is bad for want of notice under Section 49 of the Punjab Municipal Act? OPD*
5. *Whether the suit is time barred? OPD*
6. *Whether the suit has not been filed by competent person? OPD*
7. *Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issues No.1 to 6 were decided in favour of plaintiff and against defendants. Consequently, suit of plaintiff/respondent No.1 herein was partly decreed.

8. Feeling aggrieved, defendant No.5 went in appeal, which was dismissed by learned First Appellate Court, resulting in instant Regular Second Appeal by defendant No.5 before this Court.

9. Heard.

10. Learned counsel for appellant contends courts below committed an error by granting the relief of injunction even though the suit had been filed for declaration to the effect that it was the plaintiff was the exclusive owner and in possession and its ownership had not been proved. Further, it he urges that no notice under section 49 of the Punjab Municipal Act was served on the defendant appellant before filing of the suit. And yet, issue No. 4 was wrongly decided against the appellant. In my opinion, these contentions are untenable.

11. No infirmity has been pointed out in the concurrent finding of fact recorded by the learned courts below to the effect that the plaintiff was in possession of the suit property. To my mind, that finding *per se* entitled the plaintiff to the relief of permanent injunction as granted in the case. The learned first appellate Court found that notice under section 80 CPC had been served on the defendant before filing of the suit which served the object and purpose of notice under section 49 of the Punjab Municipal Act to apprise the defendant of the plaintiff's claim. Again, this finding of fact on service of notice under section 80 CPC is not questioned in the instant appeal. In the premise, no fault can be found with its view that to the effect that the said notice served the object and purpose of notice under section 49 of the Punjab Municipal Act. Both of the above contentions are, therefore, rejected.

12. Having perused the impugned judgments, my considered opinion is that the submissions made before learned Courts below were duly dealt and repelled by recording sound and sufficient reasons consistent

with record and the applicable law. I am inclined to agree with the same.

There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

12.1. No new arguments have been raised other than reiteration of the stand taken before learned Courts below.

13. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

14. Perusal of above clearly reflects that appellant herein is not remediless. All that the decree envisages that the appellant-Municipal Committee shall not take any action forcibly and/or illegal action against occupants of the land to dispossess them.

15. Being so, nothing precludes the appellant-Committee to file appropriate proceedings in law to seek possession of their suit property, in accordance with law.

16. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

17. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.

- 18. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
- 19. Pending application/s, if any, shall also stand disposed of.
- 20. No order as to costs.

(ARUN MONGA)
JUDGE

19.04.2023

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