

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

108

RSA No.1673 of 2019 (O&M)
DATE OF DECISION: 29th AUGUST, 2024

Rajesh and others

.... Appellants

Versus

Municipal Committee, Nissing and another

.... Respondents

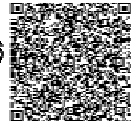
CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Vikram Singh, Advocate,
for the appellants.

* * * *

RAJBIR SEHRAWAT, J. (Oral)

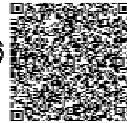
1. The present appeal has been filed by the appellants challenging the concurrent judgments, decrees and findings recorded by both the Courts below, whereby the suit for permanent injunction was dismissed.
2. The brief facts, as involved in the present appeal are that the appellants, who were the plaintiffs in the original suit, filed a suit asserting therein that they were having khokas (kiosks) situated at Karnal Kaithal Road Nissing for the last more than twenty years. The said khokas are situated on both sides of Karnal Kaithal Road. The land, on which, their khokas are situated originally belonged to the Gram Panchayat Nissing. The Gram Panchayat had permitted them to use the same by putting their khokas, and accordingly, they have been continuing with the possession of the land underneath their khokas. However, subsequently on creation of Municipal Committee in Nissing the said land has come in the jurisdiction of the Municipal Committee, Nissing,



District Karnal. The plaintiffs had been using the said property for running their meat shops and being petty shop-keepers, they have no other source of income except these small khokas. The authorities of the Municipal Committee directed them to remove the said khokas. Thereon, the plaintiffs had requested the authorities to accept the rent from them. However, the authorities have refused to accept the said demand. Hence, the suit.

3. The parties led their respective evidence. After appreciating the material on record, the trial Court dismissed the suit. Aggrieved against the same, the appellants had filed the appeal before the Additional District Judge, Karnal. However, even the said appeal has been dismissed. Hence, the present appeal has been filed impugning the judgments and decrees by the Courts below.

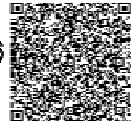
4. Arguing the case, learned counsel for the appellants has submitted that the appellants have been in a settled possession for the long time, therefore, they could not have been forced to leave the said place except by adopting due process of law. However, the respondents have not obtained any order from any competent Court for eviction of the appellants from the said places. Learned counsel for the appellants has further submitted that the appellants have been paying the licence fee to the Gram Panchayat, therefore, their possession had been acknowledged by the then Gram Panchayat. The Municipal Committee being the successor-in-interest of the Gram Panchayat is bound by the said acknowledgment, as well. The khokas in question are the only source of livelihood of the appellants, therefore, they deserved to be protected by the Courts below. However, both the Courts below have failed to protect



the appellants and have dismissed the suit filed by the plaintiffs. Hence, both the judgments and decrees passed by the Courts below deserve to be set aside and the suit filed by the appellants deserves to be decreed. No other argument has been raised.

5. Having heard learned counsel for the appellants and having perused the file; this Court does not find any substance in the arguments raised by learned counsel for the appellants. No doubt, the possession of the appellants, which might be continuing from the time of their fathers has not been disputed by the Municipal Committee, however, it has been duly asserted that the Municipal Committee has never authorized these persons to put any khokas at the places where they have encroached upon the land. Although, learned counsel for the appellants has asserted that the appellants had been paying the licence fee to the Gram Panchayat, however, learned counsel for the appellants has failed to refer to any document led in evidence to show that the Gram Panchayat had permitted the appellants to occupy the place in question, as such; and that the plaintiffs or their predecessor-in-interest had ever paid the rent for the place, as such. The licence, which is stated to be placed on record before the lower Appellate Court, though not on record of the trial Court, is only a licence issued by the authorities under the Prevention of Food Adulteration Act, 1954 for conduct of business of selling meat; without specifying any place where the business was to be carried by the plaintiffs. Therefore, the said licence has no connection with the land situated in the present suit.

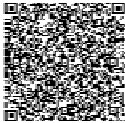
6. In the facts and situation of the case, the plaintiffs become the rank-trespasser. Therefore, they are not entitled to any injunction



against the true owner. In that regard, the Courts below have rightly relied upon the judgment rendered by Hon'ble Supreme Court in ***Sopan Sukhdeo Sable and others Versus Assistant Charity Commissioner and others, 2004 (3) SCC 137***. On the basis of above said judgment, the argument of learned counsel for the appellants that the appellants could not have been dispossessed of the property without following due process of law is also discounted. Needless to say that due process of law is meant to be invoked only for terminating the legally existing jural relationships or the effects thereof, if such jural relationships have outlived its duration or utility. Such a concept is not available to a rank trespasser.

7. The perusal of the record also shows that the Courts below have come to the conclusion that though the factum of the plaintiffs having khokas on Karnal Kaithal Road has not been specifically disputed by the Municipal Committee, however, the plaintiffs have not been able to establish on record the identity of the place where the khokas are put up; in definite terms. For that reason as well, the claim of the appellants have rightly been rejected by the Courts below.

8. Otherwise also, the present appeal is directed against the concurrent findings recorded by both the Courts below. However, the concurrent findings of fact recorded by the Courts below are not even to be interfered with only for the possibility of arriving at a different conclusion by re-appreciating the evidence; unless there is an abject perversity committed by the Courts below or there is any substantial question of law involved in the matter. However, learned counsel for the appellants has not been able to point out any substantial question of law



involved in the matter, nor is there any perversity committed by the Courts below in appreciation of the material on record.

9. In view of the above, finding no merit in the present appeal, the same is dismissed.

10. The pending miscellaneous application, if any, is also disposed of as such.

(RAJBIR SEHRAWAT)
JUDGE

29th AUGUST, 2024
'Sandeep'

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No