

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**106****RSA No.793 of 2018 (O&M)****Reserved on : 01.02.2024****Date of Decision: 08.02.2024**

Attar Singh

....Appellant

VERSUS

Municipal Council Narnaul and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. J.P. Sharma, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 30.05.2014 passed by the Trial Court and the judgment and decree dated 06.03.2017 passed by the First Appellate Court dismissing the suit filed by the plaintiff-appellant.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for permanent injunction averring that he was in settled possession over the suit land for the last more than 60 years, since the time of his ancestors, and has raised construction over it. Since the defendant-respondents were charging development cess illegally, the plaintiff-appellant had filed a civil suit in public interest against the defendant-respondents in which a decree of permanent injunction was passed restraining the defendant-respondents from charging the development cess. As per the plaintiff-appellant, because of this the defendant-respondents had become inimical towards him and had sent a notice calling upon the plaintiff-appellant to demolish the construction over the suit property and threatened to demolish the same after issuing notice under section 235 of the Haryana

Municipal Act, 1974. It was averred that the plaintiff-appellant submitted a reply to the notice wherein it was explained that he was in settled possession of the suit property since the time of his fore-fathers and he was not raising any new construction but merely getting a wall repaired as the same had fallen down during the rainy season. It was further pleaded that the Tehsildar, Narnaul and Naib Tehsildar, Narnaul had also inspected the site on 29.05.2008 and 04.06.2008 and the reports submitted by them supported the stand of the plaintiff-appellant. According to the plaintiff-appellant as per policy of the Government the land which is in settled possession of a person can be sold to that person and that the plaintiff-appellant was ready to deposit the government charges for purchasing the suit property. Hence, the suit. In their written statement the defendant-respondents raised preliminary objections regarding cause of action, maintainability, concealment of material facts etc. On merits it was denied that the plaintiff-appellant was in settled possession over the suit property for the last more than 60 years rather it was pleaded that he had no concern with the ownership of the suit property. As per the defendant-respondents the suit property was part Khewat No.1750 Khatoni No.2519 Khasra No.4724 measuring 29 bighas 2 biswas which was owned by the Municipal Committee and the plaintiff-appellant had encroached upon the same and had raised construction despite issuance of notice to him.

3. On the basis of the pleadings of the parties the following issues were framed:

1. Whether plaintiff is coming in possession over the land detailed and described in para No.1 of the plaint

from the last 60 years from the time of his forefathers as alleged in the plaint? OPP

2. Whether the defendants are entitled to demolish the construction of the plaintiff in compliance of notice bearing No. 620 dated 16.6.2008 issued by the defendants to the plaintiff? OPD

3. Whether the suit is time barred ? OPD

4. Whether the plaintiff has not affixed proper court fees ? OPD

5. Whether the present suit is not maintainable in the present form ? OPD

6. Whether the plaintiff has no cause of action to file the present suit ? OPD

7. Whether the plaintiff has concealed the true and material facts from the court ? OPD

8. Whether the defendants are entitled to special costs under section 35A CPC ? OPD

9. Relief.

4. The Trial Court dismissed the suit vide judgment and decree dated 30.05.2014. Aggrieved by the same an appeal was preferred by the plaintiff-appellant which appeal was also dismissed vide judgment and decree 06.03.2017. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant has contended that both the Courts below have erred in dismissing the suit of the plaintiff-appellant. It is submitted that the possession of the plaintiff-appellant stood established and as such he was entitled to the grant of permanent injunction.

As per counsel the impugned judgements and decrees are based upon conjectures and surmises and cannot be sustained.

6. I have heard learned counsel for the plaintiff-appellant.

7. The Courts below have reached concurrent findings of fact that the suit property is owned by the Municipal Committee. Learned counsel for the plaintiff-appellant has been unable to show anything on the record to show his ownership over the suit property. Mere possession does not establish ownership. The present suit was one for simpliciter injunction. In **Anathula Sudhakar vs. P. Buchi Reddy [(2008) 4 SCC 594]** the Supreme Court had the occasion to lay down general principles as to when a mere suit for permanent injunction will lie and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief. The relevant portion of that judgment is extracted below :

“21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in Annaimuthu Thevar [Annaimuthu Thevar v. Alagammal, (2005) 6 SCC 202]). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

8. Further, the First Appellate Court held that *“Once, the possession of the appellant-plaintiff is neither settled one nor old one in nature, the municipal council has every right to get the trespasser ejected on taking recourse to the provisions of Haryana Municipal Act, 1974. The respondents appears as acting in due course of law as they have initially issued notice under section 181 of the Haryana Municipal Act, 1974, by asking the appellant-plaintiff to demolish his construction and to vacate the disputed property. When, the respondents already have taken recourse to the related provisions of the Haryana Municipal Act, then the respondents cannot be restrained from pursuing the legal remedy for getting illegal and*

unauthorized possession of the appellant-plaintiff removed from the property in dispute”. Learned counsel for the plaintiff-appellant has not been able to convince this Court that the findings recorded by the Trial Court and the First Appellate Court are erroneous in any manner. No other point was argued.

9. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.02.2024

jk

(ALKA SARIN)
JUDGE

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