



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

129

RSA-137-1993 (O&M)

Date of decision: 20.05.2025

**Har Phool Singh deceased through
his legal representatives**

...Appellant(s)

Vs.

Nagarpalika, Narnaul

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Munish Gupta, Advocate with
Mr. Anil Saini, Advocate for the appellant.

Mt. Jagdish Manchanda, Advocate
for the respondent.

NIDHI GUPTA, J.

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the appellant for permanent injunction restraining defendant from interfering in the possession of the plaintiff over the suit property as shown in the site plan attached with the plaint, has been dismissed by both the Courts below.

2. Briefly stated the facts as pleaded in the case are that previously the plaintiff was in possession of the suit property as a mortgagee. Then the suit property was purchased by the plaintiff vide Sale Deed bearing Vasika No. 228 dated 09.05.1979 for a consideration of Rs.10,000/-. A Saw Mill was installed by the plaintiff on the suit property



after taking licence from the defendant Municipal Committee, Narnaul, and a water connection for the Saw Mill was also taken by the plaintiff from the Municipal Committee, Narnaul vide order dated 28.05.1981. A room was also constructed by the plaintiff for residence on the suit property. However, the Saw Mill and the room existing on the suit property were demolished illegally by the employees of the Municipal Committee without serving any notice to the plaintiff; and wood, parts of Sawmill, and furniture were also removed by the employees of the Municipal Committee. Because of above acts of the employees of the Municipal Committee, loss to the tune of Rs. 10,000/- has been caused to the plaintiff. The plaintiff asked the defendant Municipal Committee several times to pay him compensation of Rs. 10,000/- for the damage caused by the employees of the Municipal Committee to restore the Saw Mill, stone fencing and foundation etc. to its original position and further to restrain from interfering in the possession of the plaintiff on the suit property but it did not oblige. Hence the present suit was filed on 31.08.1984.

3. Upon notice, suit was contested by the defendant-Municipal Committee by filing written statement averring therein that the plaintiff was not the owner in possession of the suit property; that the plaintiff had encroached upon the suit property which was got removed by the Municipal Committee; and that in actual fact it was the defendant Municipal Committee which was owner of the suit property.



4. On the basis of pleadings of the parties, following issues were framed by the learned trial court vide order dated 20.09.1985:-

- “1. Whether the plaintiff is owner in possession of the property in dispute, if so, to what effect ?OPP*
- 2. Whether defendant committee illegally demolished the structure and installation of the plaintiff, if so, to what effect ? OPP.*
- 3. Whether the defendant committee removed the goods as alleged in para No.4 of the plaint, if so, to what effect ? OPP.*
- 4. Whether the plaintiff is entitled to recover Rs. 10,000/- from the defendant committee on account of damages, if so, to what effect?OPP.*
- 5. Whether the suit is barred by the principle of resjudicata, if so, its effect ? OPD*
- 6. Whether the defendant committee is entitled to get special costs, if so, to what amount ?OPD.*
- 7. Relief.”*

5. Upon appraisal of the pleadings and the evidence led by the parties, learned trial Court decided issues No. 1 to 4 against the plaintiff and in favour of the defendant; issues No. 5 and 6 against the defendant and in favour of the plaintiff; and accordingly, vide judgment and decree dated 02.08.1990, the learned Senior Sub Judge, Narnaul dismissed the suit of the plaintiff with costs. The appeal filed by the plaintiff was also dismissed by learned Additional District Judge, Narnaul vide judgment and decree dated 12.10.1992. Hence, the present second appeal by the plaintiff.

6. It is *inter alia* submitted by learned counsel for the appellant/plaintiff that the suit property was bought by the plaintiff vide registered Sale Deed No. 228 dated 09.05.1979 for a consideration of



Rs.10,000/-. It is submitted that thereafter the plaintiff had installed a Sawmill upon the suit land after taking license from the defendant. Even water connection was given to the plaintiff for the Sawmill vide order dated 28.05.1981. A room was also constructed by the plaintiff on the suit property for residence. However, the said room and Sawmill were illegally demolished by the employees of Municipal Committee without serving any notice to the plaintiff; and various movable properties of the plaintiff were also removed by the employees of the defendant Municipal Committee. Accordingly, plaintiff had filed the present suit for permanent injunction.

7. Learned counsel submits that despite the fact that a categorical finding has been given by both the learned Courts below that the plaintiff was in possession of the suit property, yet injunction has been denied to the plaintiff only on the ground that ownership of the plaintiff over the suit property was not proven. Learned counsel contends that first and foremost in a suit for injunction, ownership cannot be in issue. Injunction is to be granted only upon possession; and in the present case possession of the plaintiff over the suit land has been duly proven. It is submitted that accordingly, suit of the plaintiff has been wrongly dismissed.

8. Learned counsel further contends that even ownership of the plaintiff over the suit land cannot be doubted. The plaintiff had produced enough oral and documentary evidence to establish his ownership over the suit land. Further, onus to prove issue No.1 i.e. *“Whether the plaintiff is owner in possession of the property in dispute, if so, to what affect?”*, has been wrongly placed upon the plaintiff. It is contended that as per Section



110 of the Evidence Act, onus to prove the same was upon the defendant. In support, learned counsel has relied upon judgment of a Coordinate Bench of this Court in “**Amrit Lal vs. Phool Chand**”, **Law Finder Doc Id # 74679**. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the Id. Courts below be set aside.

9. *Per contra*, learned counsel for the defendant-Municipal Committee vehemently opposes submissions made on behalf of the defendant and submits that the suit land was in the ownership of the defendant. Sawmill was rightly demolished by the defendant as the same had been illegally constructed upon the suit land. It is submitted that the plaintiff was not in possession of the suit property. Even ownership of the plaintiff over the suit property was not proven. It is submitted that therefore, impugned judgments and decrees of the learned Courts below suffer from no error; and the present appeal deserves to be dismissed.

10. No other argument is raised on behalf of the parties.

11. I have heard learned counsel for the parties and perused the case file in great detail.

12. I have given my thoughtful consideration to the rival submissions made on behalf of both the parties. I find no merit in the submissions advanced on behalf of the defendant for the reasons recorded here in below.

13. Briefly recapitulated, the facts of the case are that previously plaintiff was in possession of suit property as mortgagee; then suit property was purchased by plaintiff from vendors Ram Chander, Narain



Parsad and Hira Lal vide Sale deed bearing Vasika No. 228 dated 09.05.1979 for Rs.10,000/-. Thereafter, Sawmill was installed by plaintiff on suit property after duly getting necessary license from the defendant Municipal Committee. Sawmill and the room existing on suit property were demolished by the defendant municipal committee due to which the Plaintiff suffered loss of Rs.10,000/-. Thus, the plaintiff filed present suit for permanent injunction *“seeking to restrain the defendant from interfering in the possession of the plaintiff on the suit property shown in the site plan attached with the plaint and also to restore the SAW MILL, stone fencing foundation etc., which have been demolished by the defendant Municipal Committee to its original position and further for recovery of Rs.10,000/- as compensation for the loss caused by the defendant Municipal Committee”*

14. Vide judgment and decree dated 2.8.1990, the learned Trial court dismissed the suit of the plaintiff on the ground that the plaintiff failed to prove that he is owner in possession of suit property. It was held that the Plaintiff had led no evidence to show as to how Ram Chander, Narain Parshad and Heera had become owners of suit property which was sold by them to plaintiff vide Sale Deed dated 09.05.1979. It was further held that the Plaintiff had not produced any of vendors to show as to how they had become owner of suit property. As such, the Defendant Municipal Committee was well within its rights to remove Sawmill illegally installed by plaintiff on suit property.



15. The Id. First Appellate Court dismissed the appeal of the plaintiff vide judgment and decree dated 12.10.1992 on the reasoning that the defendant Committee had issued Notice Ex.P7 to the plaintiff mentioning that limitation of the license granted to the plaintiff has expired and plaintiff is not having any valid license. It was held that, therefore, Defendant was in its power to demolish unauthorised construction. The learned 1st Appellate Court further held that vide Sale Deed Ex.P1 Ram Chander, Narain Parsad and Hira Lal had sold suit land measuring 6000 yd.² in favour of the plaintiff. However, as Ram Chander is not proved to be owner, he could not get sale deed executed regarding suit land in favour of plaintiff. Thus, possession of plaintiff is proved but ownership is not proved.

16. I find the above said reasoning of the learned Courts below to be patently perverse. It is not debatable that in a suit for permanent injunction only possession of the plaintiff is required to be established. For purposes of grant of injunction, question of ownership is irrelevant. Only possession needs to be proved. Undisputedly, in the present case, the Learned lower Appellate Court in para 17 of the impugned judgment dated 12.10.1992 has given the unequivocal finding that: -

“As I have come to the conclusion that when Ram Chander is not proved to be owner to get the sale deed executed regarding the suit land in favour of the appellant Har Phool. From the above discussion and evidence, I have come to the conclusion that the possession of the plaintiff on the suit property is proved but he is not proved to be owner and as such I decide issue No.1.”



17. Thus, crystal-clear finding was given that the possession of the plaintiff over the suit property was proved. This finding that plaintiff was in possession has not been challenged by the defendant. In this situation, relief of injunction could not have been denied to the plaintiff. The present appeal deserves to be allowed on this short ground itself.

18. The reasoning of the learned trial Court in non-suiting the plaintiff is as follows: -

“11. To my kind, from the material on the file, the plaintiff has not been proved to be owner in possession of the suit property. The plaintiff has illegally installed a Sawmill on the suit property and raised some construction on the same, which have been removed by the defendant municipal committee, as the plaintiff was not owner of the suit property, on which he had installed the Sawmill and raised construction. The fact that the licence for running a Saw Mill on the suit land was given by the defendant municipal committee and also the fact that water connection was given by the defendant to the plaintiff on the suit property are of no help to the plaintiff, to show that the plaintiff was owner of the suit property. The authorities 1984 P.L.R. 426 Municipal Committee, Rewari through its Administrator Versus Parkash Chand, 1987 S.L.J. 678 Kotha Singh Vs. Municipal Committee, Narnaul and 1976 P.L.J. 224 Amrit Lal Versus Phool Chand are distinguishable from the facts of the present case. In 1984 P.L.R. 426 (supra) the plaintiff had proved on the file some rent notes. In those rent notes Chhajas were mentioned in front of the shop. In 1987 S.L.J.678 (supra) the plaintiff had a conveyance deed from the rehabilitation department in his favour. In the present case, plaintiff has produced a sale deed



executed by Ram Chander, Narain Parahad and Heera in his favour. But the plaintiff has led no evidence to show as to how the Ram Chander, Narain Parahd and Heera had become owners of the suit property which was sold by them to plaintiff vide sale deed dated 9-5-1979. The plaintiff has also not produced any of the vendors to show as to how they had become owners of the suit property. The facts of the authority 1976 P.L.J.224 Amrit Lal Vs. Phool Chand are also distinguishable from the facts of the present case. As such, the authorities referred above, are of no help to the plaintiff.

During cross-examination PW-8 has admitted that goods which were taken by the employees of the municipal committee from the suit property have been returned to him except a tin-shed. But this fact has not been mentioned in the plaint by the plaintiff. In Para No.3 of the plaint, it has been pleaded that the employees of the defendant-municipal committee had taken away the parts of Saw Mill and other goods of the plaintiff. All this shows as to how much truthful the plaintiff is. Tomy kind, the defendant-municipal committee was well within its rights to remove the Saw Mill, illegally installed by the plaintiff on the suit property, the construction illegally raised on the suit property and also the goods illegally stored by the plaintiff on the suit property. The plaintiff has also failed to prove that the goods removed by the defendant-municipal committee from the suit property are still lying with the defendant municipal committee. In view of this, I hold that the plaintiff is not entitled to any compensation from the defendant. All these issues are disposed of accordingly.” (Emphasis added)

19. Learned appellate Court had reversed the finding of the learned trial Court only to the extent that the plaintiff was held entitled to



Rs.2,000/- as damages for demolition of the structures by the Municipal Committee. It is clear-cut finding of the learned lower appellate court that even Municipal Committee is not owner of the suit property.

20. As regards ownership, it is my considered view that the issue of ownership was extraneous to the dispute at hand. As such, the learned Courts below ought not to have delved into the issue of ownership. The issue of ownership of the plaintiff over the suit property ought to have been kept open. Nonetheless, it has been contended by learned counsel for the plaintiff that in terms of Section 110 of the Evidence Act, onus was upon the defendant to prove that plaintiff was not owner of the suit property. I find merit in this argument. The said provision stipulates that *"When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."* Admittedly, it was the case of the defendant that plaintiff was not the owner of the suit property, and it was the defendant Municipal Committee which was the owner of the suit property. Thus, in terms of the above provision, once the possession of the plaintiff is proved upon the suit property then it was for the Municipal Committee to prove that the plaintiff was not owner of the same. Thus, onus was wrongly placed upon the plaintiff to prove his ownership. The above view is supported by the judgment relied on by the plaintiff in case of **Amrit Lal supra** wherein it is held that: -

"Section 110 of the Evidence Act is in the following terms:

"When the question is whether any person is owner of anything of which he is shown to be in possession, the



burden of proving that he is not the owner is on the person who affirms that he is not the owner."

*From the reading of the above Section, it is clear that when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner. In this case the defendant has failed to discharge the onus. **Nizam Din v. Naranjan Das, AIR 1927 Lahore 841**, can be read with advantage, wherein it has been held as follows:-*

"Where plaintiff is in possession of property of which he says he is the owner, the onus of proving that he is not the owner lies on the defendant."

*To the similar effect are the observations in **Ismail Ariff v. Mahomed Ghous, ILR 20 Calcutta 834**, wherein it has been held as under :-*

"Lawful possession of land is sufficient evidence of right as owner, as against a person who has no title whatever, and who is a mere trespasser. The former can obtain a declaratory decree, and an injunction restraining the wrong-doer."

21. Thus, it was for the defendant to dispel the claim of the plaintiff that plaintiff was not owner of the suit property.

22. Furthermore, the record reveals that it was clearly pleaded case of the plaintiff that he was previously a mortgagee on the suit property; and the suit property was subsequently purchased by him vide registered Sale Deed No. 228 dated 09.05.1979 (Ex.P-1). The said Sale Deed of the plaintiff was proved from the evidence of attesting witness PW7 Mani Ram, who had deposed that Ram Chander, Heera Lal and



Narain Parshad (vendors/predecessors in interest of the plaintiff), had agreed to sell the suit land to the plaintiff; and plaintiff had paid Rs.2,000/- to these vendors in the presence of the said Mani Ram PW7; and prior to that, even a sum of Rs.4,000/- was paid by the plaintiff to the vendors as mortgage money. Second attesting witness PW6 Mahavir Prashad has also deposed that he was attesting witness of the Sale Deed dated 9.05.1979. Even Scribe Madan Mohan PW4 had deposed that Agreement Ex.P3 was scribed by him. PW3 Sagar Ram Gupta, Municipal Architect had proved the site plan Ex.P2 produced by the plaintiff along with his Sale Deed Ex.P1.

23. This Court finds it strange that despite all of the above unrefuted evidence, learned Courts below have held that ownership of the plaintiff over the suit land was not proven; only on the perverse reasoning, that plaintiff was unable to prove ownership of his vendor Ram Chander over the suit land. Even the registered Sale Deed of the plaintiff has not been challenged by the defendant.

24. On the other hand, the Defendant had produced only DW1 Basti Ram, Junior Engineer, who had made bald statement that suit property is owned by the defendant-department. However, defendant was unable to explain that if this was so, then why was license given to the plaintiff to operate a Sawmill on the suit property. It has been admitted by the defendant that license was issued in favour of the plaintiff to install Sawmill on the suit land, whereafter even a water connection was taken by the plaintiff from the Municipal Committee to run the Sawmill. It has



also not been denied that plaintiff had applied for license along with his title documents. It was admitted that Plaintiff had constructed chhappar, tin-shed and kanta on the suit property. It may be noted that the admissions of the defendant to the effect that license for running the Sawmill over the suit land was given by the defendant Municipal Committee; that the water connection was also given by the defendant to the plaintiff on the suit property, inevitably and irrevocably establish the possession of the plaintiff over the suit property. Receipts and license fee deposited by the plaintiff with the Municipal Committee (for obtaining electric and water connection etc. are available at pages No. 151, 153 and 155 of the LCR) which also amply proved the possession of the plaintiff over the suit property.

25. In view of the discussion above, present regular second appeal is **allowed**; and the impugned judgments and decrees of the learned Courts below are set aside. The suit of the plaintiff is decreed as prayed for.

26. Pending applications, if any, stand disposed of.

20.05.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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