



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-999 of 1993 (O&M)

Date of Order:28.01.2025

Dharam Singh (since deceased) through LRs and others

.Appellants

Versus

Jagat Singh (deceased) through LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Kaushal, Sr. Advocate, with
Mr. A.P.Setia, Advocate
Mr. Arjun Kaushal, Advocate
for the appellants.

Mr. Raj Kumar Gupta, Advocate
Mr. Ashish Gupta, Advocate
for the legal representatives of
respondent-Jagat Singh.

ANIL KSHETARPAL, JUDGE (Oral)

CM-26-C-2025

1. For the reasons stated in the application which is supported by an affidavit, the application for bringing on record the legal representatives of deceased late Sh. Jagat Singh [respondent no.1] mentioned in paragraph 2 of the application, is allowed, subject to all the just exceptions.

2. The amended memo of parties is taken on record.

3. CM stands disposed of.

MAIN

1. This Regular Second Appeal has been filed by the defendants to assail the correctness of the concurrent judgments of the courts below while decreeing the plaintiff's suit for grant of decree of permanent injunction



restraining the defendants from taking forcible possession of 5 kanals land.

2. Both the courts have held that though the plaintiff claimed injunction on the basis of ownership, however, he failed to prove the same, however limited injunction against forcible dispossession has been ordered.

3. It may be noted here that there was another round of litigation in a suit filed by the plaintiff (respondent herein) who is an advocate. He filed a suit in the year 1971, for grant of decree of permanent injunction which was withdrawn on 07.11.1977, with permission to file a fresh suit. Ultimately, the fresh suit was filed on 23.08.1979, against Municipal Committee, Jind. In that suit also, the plaintiff claimed ownership and possession over 5 kanals land which is the suit land in the present case.

4. The trial court dismissed the plaintiff's suit, however, the First Appellate Court granted an injunction in favour of the plaintiff against forcible dispossession. Regular Second Appeal in the High Court was dismissed in limine. However, the Supreme Court by an elaborate judgment in *Nagar Palika, Jind vs. Jagat Singh, Advocate, (1995) 3 SCC 426 (Civil Appeal No.290 of 1990, decided on 23.03.1995)*, held that the suit property is, in fact, a 'Gair Mumkin Pond' which is a public pond. Further, the Supreme Court further further held that once the plaintiff came to the court to seek injunction on the basis of ownership which he failed to prove, he was not entitled to any injunction.

5. In this case, both the courts have again committed the same error. It is surprising that the Municipal Committee, Jind, has slept over the matter, although the Supreme Court decided the case against the plaintiff 30 years back.



6. The learned counsel representing the appellant submits that the defendants have proved their title as they purchased the property by virtue of registered sale deed dated 22.10.1982. It may be noted here that the trial court on appreciation of the pleadings, culled out the following issues:-

- “1. *Whether the plaintiff is the owner in possession of the suit land, as alleged?OPP*
2. *Whether the plaintiff is entitled to the injunction as prayed for?OPP*
3. *Whether this suit is not maintainable in the present form?OPD*
4. *Whether the plaintiff is estopped from filing this suit by his own act and conduct?OPD*
5. *Whether the defendants are in possession of the suit land, as alleged?OPD*
6. *Relief.”*

7. When the suit was pending, issue no.5 was deleted vide order dated 01.08.1986,. Thereafter, the defendants' ownership was never subject matter of issue before the courts below. Hence, it would not be appropriate to record any finding on this aspect of the matter particularly when the plaintiff's suit for injunction based on ownership was being decided.

8. The learned counsel representing the respondents has relied upon the judgment passed in **A. Subramanian and another vs. R. Pannerselvam, 2021 (1) RCR(Civil) 902.**

9. This court has carefully read the judgment. In the last paragraph, the Supreme Court itself has held that the aforesaid judgment is being delivered in the peculiar facts of the case.

10. In any case, even if the plaintiff is in possession of the property, the Municipal Committee under the Haryana Municipal Act, 1973

(hereinafter referred to as 'the 1973 Act') has enabling power to take possession from unauthorized occupant of the municipal property.

11. Keeping in view the aforesaid facts and discussion, a copy of the judgment be forwarded to the Chief Secretary, Haryana, to initiate action and take over the possession of the property within a period of two months in accordance with the provisions of the 1973 Act, from the date of of certified copy of this order.

12. The appeal stands disposed of.

13. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

January 28, 2025
nt

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