(2011) 04 P&H CK 0328

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 453 of 2009 (O and M)

Surja Ram	APPELLANT
Vs	
Sham Lal and Others	RESPONDENT

Date of Decision: April 29, 2011

Citation: (2011) 04 P&H CK 0328

Hon'ble Judges: M.M.S. Bedi, J

Bench: Single Bench

Judgement

M.M.S. Bedi, J.

Suit of the Plaintiff-Appellant for declaration and mandatory injunction regarding the property in dispute mentioned in the heading of the plaint has been dismissed by the Courts below observing that the Plaintiff has failed to establish his ownership though the possession of the Plaintiff-Appellant over the land in dispute in view of exchange with Gram Panchayat, Defendant-Respondent No. 9, which was proceeded against ex parte, has been established, but the Courts below have discarded the claim of the Plaintiff-Appellant regarding his ownership in lieu of exchange as the Plaintiff-Appellant had not been able to establish that the exchange was pursuant to any sanction granted by the Director, Panchayats. The lower appellate Court has declined to grant injunction to the Plaintiff-Appellant observing that no specific instance of Defendants having taken steps to dispossess the Plaintiff-Appellant from the property in dispute has been mentioned to show the cause of action having been arisen to the Plaintiff-Appellant. Even if it is presumed that the property in dispute vests in Gram Panchayat and the exchange, as suggested by the Plaintiff-Appellant, is not valid, then the Plaintiff-Appellant can be dispossessed from the property in dispute in accordance with law. The Plaintiff-Appellant has been held to be in possession by both the Courts below but injunction has been declined to him, he having not been able to establish the ownership.

2. In view of said circumstances, the following substantial question of law arises:

Whether a person who is established to be in possession and has not been able to prove his ownership on the basis of any valid exchange deed, can be declined injunction and as to whether he can be forcibly dispossessed from the said property?

3. Taking into consideration the concurrent finding of fact that the Plaintiff-Appellant is in possession of the property; the Defendant-Respondent Nos. 1 to 8, having also not been able to establish their better possessory title over the property in dispute; The original owner of the property, if any, is Gram Panchayat; In view of above circumstances, the finding of fact regarding status of the property in possession of the Plaintiff-Appellant is upheld and does not warrant any interference. However, so far as relief of injunction is concerned, the findings of the Courts below on issue No. 5, are modified and it is ordered that the Plaintiff-Appellant cannot be dispossessed from the property in dispute except by due process of law as the Defendant-Respondent Nos. 1 to 8, have not been able to establish any better possessory title than the Plaintiff-Appellant.

4. Disposed of with above modification in the decree.