

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****120****RSA-3415-2018 (O&M)****Date of decision: 05.02.2025****Shiv Charan****...Appellant(s)****Vs.****Municipal Committee Bawal and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Shubham Saroha, Advocate for  
Mr. Shiv Raj Malik, Advocate for the appellant.

**\*\*\*****NIDHI GUPTA, J.**

The plaintiff has laid challenge to the concurrent judgments and decrees of the learned Courts below, whereby the suit preferred by the appellant for permanent injunction (to the effect that the defendants be restrained from removing the wooden khokha as described in the plaint, of which the appellant is the owner in possession), has been dismissed.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and the respondents are the 'defendants'.

3. The present suit has been filed by the plaintiff seeking permanent injunction. The plaintiff claims himself to be in possession of the wooden khokha/shop in dispute since 1989. The said shop in dispute is stated to be existing on the property of one Rajiv Kumar. It was alleged in the plaint that the defendant-Municipal Committee had threatened the



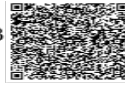
plaintiff to remove the wooden khokha/shop (property in dispute) from the spot by 28.03.2011. Thus, the present suit was filed on 09.04.2011 seeking injunction against the defendants, restraining them from ejection of the plaintiff from the property in dispute.

4. The suit was opposed by the defendants/Municipal Committee by filing written statement averring therein that the plaintiff has concealed the material facts. It was alleged that the plaintiff had encroached upon *rasta sare aam* and constructed the property in dispute. The plaintiff had illegally encroached upon the common rasta which vests in the Municipal Committee. It was also pointed out that the Government of Haryana had once removed the khokha of the plaintiff. However, he had illegally constructed it again on common rasta.

5. On the basis of evidence brought on record, the case of the defendants was found to be correct and true. As such, the suit of the plaintiff was dismissed by learned trial Court vide judgment and decree dated 11.08.2015.

6. The plaintiff went in appeal before the learned Additional District Judge, Rewari. The said appeal was also dismissed vide the judgment and decree dated 10.08.2017, thereby affirming the judgment and decree dated 11.08.2015. Hence, the present second appeal.

7. Learned counsel for the appellant/plaintiff contends that the appellant had duly proved his case that he is in continuous possession of the suit property without any interruption. The appellant is running his livelihood and is solely dependent on the said shop/khokha since the past



30 years. It is submitted that the appellant had duly proved his ownership and possession over the suit property/khokha by way of Ex.PW1/1 site plan; Ex.PW6/1 copy of loan granted by Harijan Kalyan Nigam; and Ex.PW6/3 copy of clearance certificate issued by the Harijan Kalyan Nigam. It is contended that these documents clearly prove that appellant has obtained loan regarding general store on 02.06.1988, after which the said shop has been continuously run by the appellant in the khokha in dispute. The existence is also proven since the year 1988. Even at present, at the time of filing of the suit, the plaintiff is in possession since about last 24 years. As such, the respondent-Municipal Committee had no right to remove the said wooden khokha illegally by use of power. Further, in case the appellant is dispossessed from his shop, his family will be on road as he belongs to very poor family and he is not in a position to earn his livelihood by any other mode.

8. Ld. Counsel further submits that there was nothing on record to indicate that the khokha of the appellant existed in alleged *rasta sare aam* as alleged by the respondent-Municipal Committee. It is submitted that in passing the impugned judgments, the learned Courts below have failed to properly consider the evidence produced by the appellant; and have misread the evidence produced by the defendants-Municipal Committee. It is pointed out that learned trial Court has erred in ignoring the testimony of DW-1 Rajender Sharma Draftsman, who has admitted in his cross-examination that prior to preparing the site plan, he could not carry out any demarcation as per the Revenue Act or as per the guideline of



FC Haryana, as he had not seen the revenue record at the time of preparing the site plan. It is reiterated that even the other defence evidence on record has been misread in favour of the defendants by the learned Courts below.

9. No other argument is raised on behalf of the appellant.

10. I have heard learned counsel for the appellant and perused the case file in great detail.

11. The case as set out by the plaintiff in the plaint was that the khokha/shop in dispute was situated in the property of one Rajiv Kumar DW2. However, Rajiv Kumar himself as DW2 had deposed that the shop in dispute is not situated on his property. The plaintiff also failed to prove that he was tendering any rent to the said Rajiv Kumar. Accordingly, the learned trial Court held that the plaintiff had failed to prove his possession over the suit property.

12. The Id. Courts below have also concurrently found that the wooden khokha/shop in dispute had been placed by the plaintiff upon the public rasta which vests in the defendants/Municipal Committee. This was established from the site plan Ex.DW1/B duly proved by DW1. The plaintiff further failed to prove his title and long settled possession over the shop in dispute. The plaintiff also did not serve the mandatory notice required under Section 52 of the Haryana Municipal Act, 1973. For the afore-noted reasons, the suit of the plaintiff was dismissed by both the Courts below.

13. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings of the Id. Courts below.



14. The present regular second appeal is accordingly, hereby **dismissed.**

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

**05.02.2025**

Divyanshi

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

**(NIDHI GUPTA)**  
**JUDGE**