

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-46-2022(O&M)****Date of Decision: 01.04.2025****Pohap Singh (since deceased)  
through his LRs and others**

. . . .APPELLANTS

Vs.

Municipal Corporation, Faridabad and another

. . . .RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present:- Mr. A.K. Jindal, Advocate, for the appellants.

**DEEPAK GUPTA, J.**

Plaintiffs of the case are before this Court against the concurrent findings of the Courts below, inasmuch as suit for declaration with consequential relief of permanent injunction, regarding property in dispute, filed by them, was dismissed by the trial Court of Id. Additional Civil Judge (Sr. Divn.), Faridabad on 16.11.2018, and the appeal filed by the said plaintiffs-appellants was dismissed by the First Appellate Court of Id. Additional District Judge, Faridabad on 04.01.2020.

2. The only contention raised by learned counsel for the appellants is that evidence on record has not been properly appreciated by the courts below.

3. The plaintiffs claimed title to the suit property on the basis of its purchase from the Gram Panchayat, Sihi vide a receipt dated 30.11.1961 and that they had raised construction thereon. Plaintiffs had won the earlier litigations regarding the property in dispute, but later on the defendants-respondents- Municipal Corporation, Faridabad issued the impugned notice under Section 408A (1) of the Haryana Municipal Corporation Act, 1994 on 16.10.2017. Said notice was alleged by the plaintiffs to be null and void.

4. Defendants denied the title of the plaintiffs and submitted that after the abolition of Panchayat, Village Sihi had come within the limitation of Municipal Corporation, Faridabad. Entire Shamlat deh land of Village Sihi had become the property of Municipal Corporation. It was also submitted that

defendant-Municipal Corporation, Faridabad was not the party to the litigation as referred by the plaintiffs.

5. After framing of necessary issues and taking into account the evidence produced by parties, suit was dismissed by the trial Court, and the findings have been endorsed by the First Appellate Court.

6. It will be apt to reproduce the relevant observations as made by the Id. First Appellate Court, which read as under: -

“25. On perusal of record, it is fairly admitted by both the parties that the suit property, which is part of khasra no.152 of village Sihi, was owned by Gram Panchayat. It is also admitted that in the year 1971, Faridabad Complex Administration Act, 1971 came into existence and the shamlat land of village Sihi became part of the FCA and the suit land was transferred in favour of FCA vide mutation No.2324 sanctioned on 27.01.1974 placed on file as Ex.D1. It is also admitted that in the year 1974, the FCA has issued a notice of ejectment against the appellants, whereupon the appellants filed a civil suit No.574 of 1975, which was decided by the court of Sub Judge on 12.10.1977. It was held by the court that *“as a consequence of my findings on issue no.1, the suit of the plaintiffs for declaration that they are owners of the suit property fails and to that extent it is dismissed. However, the suit of the plaintiff for permanent injunction against the defendant succeeded. I, therefore, restrain the defendants permanently from forcibly dispossession the plaintiffs from the suit property except in due course of law. Under the circumstances of the case, parties are left to bear their own costs.”* It is also admitted that FCA preferred an appeal against the said judgment, but the appeal was dismissed.

26. It is also admitted that in pursuance of judgment dated 12.10.1977, the respondent FCA issued a notice under Section 4 of Public Premises Act in the year 1981 and when the proceedings initiated before the Collector, Faridabad, the request of FCA was declined by the Collector vide order dated 12.02.1982, whereby it was held that the possession of the appellants are more than 20 years old. They have claimed to have purchased the said land from Gram Panchayat, Sihi and ultimately dismissed the application.

27. It is also admitted that FCA in the year 1991 issued fresh notice under Section 52 of the Faridabad Complex Administration Act, 1971. Thereafter, another civil suit for perpetual injunction was filed by the appellants, which was decided on 25.02.2000 by the court of Shri R.K. Saini, the then learned Civil Judge (Sr. Divn.), Faridabad. The trial court held that the appellants were declared to be in possession over an area measuring 392 square yards, as shown with letters ABCD in the site plan Ex.D10 and therefore, the respondents/defendants were restrained from interfering in the possession of the plaintiffs to this extent, except in due course of law. Rest of the suit of the plaintiffs fails and the same was dismissed. In the peculiar circumstances of the case, both the parties were left to bear their own costs. The copy of the judgment is Ex.P4 and the decree sheet is Ex.P5.

28. It is also admitted on record that one of the appellant Mahender filed a suit for possession by way of partition against Pohap Singh and L.Rs. of Sant Singh. In the said civil suit decided on 17.11.2007 by the court of Shri S.K. Garg, the then learned Addl. Civil Judge (Sr. Divn.), Faridabad, the parties were held to be owners in possession to the extent of 1/3rd share and a preliminary decree was passed accordingly in their favour. It is also admitted that in the said suit, a local commissioner was appointed, who submitted report as Ex.P3. The copy of the judgment and decree sheet are Ex.P1 and Ex.P2.

29. It is also admitted that after The Haryana Municipal Corporation Act, 1994 came into existence, Municipal Corporation, Faridabad (MCF) came into existence and notice under Section 408A(1) of Haryana Municipal Corporation Act, 1994 was issued and the copy of the same are placed on file as Ex.D3 to Ex.D8, alleging that the appellants are encroacher of the land.

30. It is also admitted that the jamabandi of the land of village Sihi including the suit land have been placed on file by the appellants/plaintiffs as Ex.PW4/A to Ex.PW4/K. It is also admitted that in the suit land, the Gram Panchayat, Sihi has been shown to be owners of the land failing in khasra no.152 measuring 37 kanals 5 marlas and then entry came in favour of FCA in the year 1973-74. It is also admitted that the said land has been shown as gair Mumkin abadi and then it has been shown as gair Mumkin school from the year 1983-84 onwards. It is also admitted that the photographs have been placed on file as Ex.PW5/1

to Ex.PW5/11 showing that they (appellants) have raised construction in the shape of shops and rooms and residing therein and thus, the possession of the appellants is not in dispute.

31. In these admitted facts, the question before the court is as to whether the appellants are owners in possession or as to whether the property is owned by respondent-Corporation and illegally encroached upon by the appellants?

32. It is pertinent that the appellants have claimed the ownership of the suit land claiming that they had purchased the same for a consideration of Rs.98/- from the Gram Panchayat on 20.11.1961. However, no document has been placed on file to show that the ownership was ever transferred in their favour. The plaintiffs have not placed the copy of the receipt nor the resolution passed by the Gram Panchayat to this effect nor that the same was approved by the Government of Haryana. Had the appellants were owners of the suit land and were having some document of title with them, then even in the year 1977, the suit would have been decreed in their favour in toto and the relief of declaration of ownership would not have been declined. Thus, from the judgments of the years 1977 and of 2000, it is established that the appellants have failed to prove their ownership.

33. It is well settled that the ownership of the land is transferred by way of relinquishment, gift or sale. However, the appellants have not been able to place on record any document to show that they have acquired ownership by way of relinquishment, gift or sale. Moreover, revenue record placed on file Ex.PW4/A to Ex.PW4/K shows that the suit property was earlier owned by the Gram Panchayat and vide mutation No.2324 dated 22.01.1974, the ownership was transferred in favour of FCA. Since the appellants are not owners, therefore, for all intends and purposes, the appellants/plaintiffs are deemed to be in unauthorised possession of the suit property. The admission in the judgment dated 17.11.2007 passed by the court of Shri S.K. Garg, was amongst the so-called co-owners and the said judgment is not binding on the rights of the FCA. Similarly, the order passed by the District Collector dated 12.02.1982 does not confer title of the suit property in favour of the appellants/plaintiffs. Even if some admissions have been made by the Patwari, the said admissions

would not confer title in favour of the plaintiffs as it is well settled that the title is transferred by way of specific mode i.e., relinquishment, sale or gift.

34. In view of the foregoing reasons and discussion, the court is of the view that the appellants/plaintiffs have failed to establish their ownership qua the suit property.

35. It is pertinent that the appellants have approached the court twice and in both the judgments, they were held to be in possession and were not held to be owners of the suit property. Both the times, it was directed by the court that they may be removed from their possession in due course of law. The respondent-Corporation had issued notice under Section 408A(1) vide Ex.D3 to Ex.D8 and also issued general notice Ex.D9 and even specific notices were issued to Ved Parkash, Rajender, Jogender, Ashok Kumar, Kanwar Singh and Virender Singh vide Ex.D10 to Ex.D15. Meaning thereby, the MCF had issued notices and initiated the process in accordance with law, as provided under the Haryana Municipal Corporation Act, 1994. There might be some lacunae in the impugned notices, but sufficient opportunities have been granted by the respondent/Corporation to appear in person in consonance with the principles of natural justice. Hence, these notices cannot be said to be illegal, null and void.

36. It is pertinent that no notice was issued by the appellants before filing the present suit in violation of provisions of Section 389 of Haryana Municipal Corporation Act, 1994. The suit of the plaintiffs is not only for perpetual injunction, but also for declaration i.e., to set aside the notices Ex,D2 to Ex.D8 and Ex.D10 to Ex.D15. Thus, issuance of notice was mandatory before filing the present suit, which the appellants/plaintiffs have not complied with. Thus, the suit of the appellants is not maintainable for want of proper notice.

37. The learned counsel for the appellants has also raised a plea that the notices Ex.D2 to Ex.D8 are pertaining to the land measuring 320 square yards, whereas the total land is 392 square yards. Since, the notices have been given qua the area specifically mentioned in each notice and said notices applicable qua that specific area and the MCF is at liberty to remove the unauthorized encroachment accordingly.

38. In view of the foregoing reasons and discussion, the court is of the view that the entire case rest on the documentary evidence and the appellants/plaintiffs failed to prove their title over the suit property and are not entitled for injunction, as their possession is unauthorised one. Further, the proceedings are initiated by the MCF in accordance with the provisions of Haryana Municipal Corporation Act, 1994. Therefore, the learned trial court has rightly dismissed the suit. There is no illegality or irregularity in the judgment and decree passed by the learned trial court, which warrants interference by this Court.

39. It is also observed that the appellants are in possession of the suit property from the year 1961 onwards, they are liable to pay use and occupation charges to the MCF, who are owners of the suit property after 1971. The MCF is at liberty to initiate proceedings to recover use and occupation charges of the suit land from the appellants, who are in unauthorized occupation of public land. With these directions, appeal is dismissed with costs. Decree-sheet be prepared accordingly. Lower Court record along with copy of judgment be sent back. Appeal file be consigned to the record-room."

7. It is evident from the aforesaid observations that suit property which found part of Khasra No.152 was owned by Gram Panchayat. Faridabad Complex Administration had come to existence in 1971 and the Shamlat deh land of village Sihi, of which the suit property formed part, became part of the FCA. Mutation No.2324 was sanctioned on 27.01.1974 (Ex.D1) in favour of the FCA. Ejectment notice was issued to the plaintiffs-appellants. They filed the Civil Suit. It was decreed to that extent that they i.e. plaintiffs will not be ejected except in due course of law. It was admitted by the plaintiffs that pursuant to the aforesaid judgment dated 12.10.1977, notice under Section 4 of the Public Premises Act, 1981 was issued to the plaintiffs. They claimed to have purchased the suit land from Gram Panchayat, Sihi, but failed to prove this contention. It was also found that in the other litigation, as initiated by the plaintiffs, the defendants were not the party. Municipal Corporation, Faridabad had come into existence after coming into force of the Haryana Municipal

Corporation Act, 1994 and fresh notices were issued to the plaintiffs. Plaintiffs again claimed ownership to the suit property, but failed to prove the same.

8. Before this Court also, it is conceded by Id. counsel that no document relating to title over the suit property could be produced by the plaintiffs.

9. In view of the above, this Court does not find any ground to interfere in the well-reasoned concurrent findings of facts as recorded by the Courts below in the absence of any illegality or perversity. Holding the present appeal to be devoid of any merit, the same is hereby dismissed.

**01.04.2025**

*Vivek*

**(DEEPAK GUPTA)  
JUDGE**

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>