
(2009) 03 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 1086 of 2009

Amar Nath

APPELLANT

Vs

Municipal Corporation

RESPONDENT

Date of Decision : 02-03-2009

Acts Referred:

Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 4, 7

Citation : (2009) 03 P&H CK 0012

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—This appeal is directed against the order dated 16.2.2009 passed by Additional District Judge, Bathinda, dismissing the application of the Plaintiff/Appellant filed under Order 39 Rules 1 & 2 read with Section 151 of CPC (in short "CPC").

2. Briefly stated, the facts of the case are that Plaintiff filed a suit for declaration to the effect that he is owner in possession of shop measuring 9' - 3" x 11", bearing M.C. No. 2711/A/2, situated at Old Bus Stand, near Fauji Chowk, Bathinda, and the notices dated 10.5.2000 issued under Sections 4 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (in short "the Act"), by the collector, Ferozepur and the order dated 26.3.2002 passed by Collector, Sub Division, Bathinda, in the case titled as "Nagar Council v. Amar Nath" are illegal, null and void and also for permanent injunction restraining the Defendant-Municipal Counsel, Bathinda, from dispossessing the Plaintiff from shop in question. The suit was dismissed by Civil Judge (Jr. Division), Bathinda vide judgment and decree dated 22.10.2008. The Plaintiff filed statutory appeal before the District Judge, Bathinda, along with an application under Order 39 Rules 1 and 2 read with Section 151 CPC. The said application was contested by the Defendant. The learned Additional District

Judge, Bathinda, who was seized of the matter, observed that the Plaintiff could not produce any document to prove his ownership over the shop in question, therefore, he was found to be in unauthorized occupation. Since Plaintiff has filed the suit for declaration that he is owner in possession of the shop in question and the notice dated 10.5.2000 issued under Sections 4 and 7 of the Act are null and void, the Plaintiff had to prove at least prima facie that he is the owner in possession of the suit property, but it was observed by the Court below that no document of title was shown to the Court, therefore, no prima facie case was found in his favour. It was also observed that since public property is involved, therefore, restraint order should be passed very sparingly against the public authorities.

3. In order to find out a prima facie case in favour of the Appellant, even this Court had asked learned Counsel for the Appellant to at least show any document which could prove his title over the property in dispute but the learned Counsel for the Appellant could not show/point out any document on record which could prove a prima facie case of title in his favour. Therefore, I do not find any merit in the present appeal and the same is thus dismissed without any order as to costs.