
(2015) 02 P&H CK 0417
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1030 of 2015

Sushil Devi and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 227

Citation : (2015) 178 PLR 487

Hon'ble Judges : Bharat Bhushan Parsoon, J

Bench : Single Bench

Advocate : Virendra Rana, for the Appellant

Final Decision : Dismissed

Judgement

Bharat Bhushan Parsoon, J—Invoking supervisory jurisdiction of this Court under Article 227 of the Constitution of India, in this revision petition, the plaintiffs in the suit, petitioners herein, have impugned order dated 4.11.2014 (Annexure P-3) of the lower court passed on an application under Order XXXIX Rules 1 and 2 C.P.C. in civil suit No. 8464 of 2014 titled "Smt. Sushil Devi and others v. State of Haryana and another", as also order dated 2.2.2015 (Annexure P-4) passed by the first appellate court i.e. District Judge, Bhiwani. Claiming themselves to be in occupation of the residential houses, the plaintiffs had sought injunction against the defendants not to interfere in their possession. This request of the petitioners-plaintiffs was strongly contested by the defendants, respondents herein wherein it was claimed that the petitioners-plaintiffs are encroachers on the land of Municipal Committee, Bawani Khera and rather are interfering in the execution of the scheme of the construction of a park for which the respondent-Municipal Committee had also passed a resolution on 24.9.2013 allotting the property to the Government of Haryana for construction of the park. It is claimed that in the guise of the present suit, the petitioners wanted to further encroach upon the land. Prayer for dismissal of the application was made.

2. Considering rival claims of the parties, the lower court as well as the first appellate court had found no case in favour of the petitioners and, consequently, had dismissed their application under Order XXXIX Rules 1 and 2 C.P.C.

3. In this petition, it is claimed that the petitioners are living after raising construction on the land and thus, the respondents have no right to interfere in their possession.

4. When questioned about capacity of the petitioners in which they are allegedly in possession of the land, the counsel for the petitioners could not satisfy this Court. It is clear from the impugned orders and record on the paper book that the petitioners are merely encroachers on the land without having any right, title or interest therein. Merely by tying their cattle-heads or making hutments, the petitioners would not get any right, title or interest in the land which apparently belongs to Municipal Committee, Bawani Khera which had already passed a resolution in favour of the Government of Haryana on 24.9.2013 granting the land for construction of a park.

5. It is pertinent to note here that while dismissing the application in the impugned order of 4.11.2014, the lower court has specifically found neither any prima-facie case nor balance of convenience in favour of the petitioners. Rather, it was mentioned that balance of convenience lies in favour of the respondents.

6. It was, however, mentioned that the respondents are to adopt due procedure for demolition of any illegal construction. Relevant lines of the impugned order of 4.11.2014 to this effect are reproduced as below:

"However, the respondents are directed to adopt due procedure for the demolition of any illegal construction. Any demolition which is conducted in violation of due procedure shall not be protected by this order."

7. Keeping in view the totality of facts and circumstances as discussed earlier, the application under Order XXXIX Rules 1 and 2 C.P.C. of the petitioners was rightly dismissed by the courts below. Sequently, affirming the impugned orders, this petition, being devoid of any merit, is dismissed. It is, however, made clear that demolition would be conducted by following due process of law.