

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No. 1022 of 1988
Date of decision: 31.07.2015

Hardip Singh

....Appellant(s)

Versus

Sarla Devi & another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.C.B.Goel, Advocate, for the appellant.

G.S.SANDHAWALIA, J. (Oral)

1. The present appeal, filed by the plaintiff-appellant, is directed against the concurrent findings of the Courts below where the suit for permanent and mandatory injunction had been dismissed.

2. The case of the plaintiff is that his grandfather was owner in possession of certain agricultural land and he died in the year 1964. A will had been executed in favour of his 6 sons including the father of the plaintiff and the daughter. A house which included one room and verandah, shown in red colour in the site-plan (Exhibit P1) had been constructed in the portion of the plot by his father of his share during his lifetime who died in the year 1977. Defendant No.2 was one of his uncle and defendant No.1-Sarla Devi was the widow of Balbir Singh, another uncle. The suit was contested by Sarla Devi by taking the plea that the house was constructed over the share of Harpal Singh, who had sold his property to Sarla Devi vide registered sale deed dated 27.07.1973 (Exhibit D1). The plaintiff had never constructed in his portion nor was in possession till October, 1979 and she was living at Dehradun and he took advantage and encroached upon the land and he was only a trespasser.

3. The following issues were framed by the Trial Court:

“1. Whether the plaintiff is in peaceful possession of the room and

the verandah in dispute as alleged? OPP

2. Whether the plaintiff has encroached upon the property in dispute? OPD

3. Whether the suit is not maintainable in the present form? OPD

4. Whether the suit is false and frivolous? OPD

5. Whether the plaintiff is entitled to the decree prayed for? OPP

6. Relief.”

4. After perusing the evidence on record, the Trial Court came to the conclusion that the plaintiff was in possession of more land than he was entitled to. Nothing had been brought on record to show that he had even raised construction on the property in question and the will had never been proved on the basis of which the right was claimed. It was, thus, held that he was in possession of the property at the time of bringing the suit on 07.11.1979 but he was not continuing in possession and his possession was held to be that of a trespasser. On issue No.3, the suit was held not to be maintainable whereas under issue No.2, it was held that he had encroached upon the property of the rightful owner. Issues No.4 & 5 were decided in favour of the defendants by holding that the suit was false and frivolous and the plaintiff was not entitled to the decree and Sarla Devi could take possession by adopting lawful means.

5. An appeal was preferred before the Lower Appellate Court which noticed that the plaintiff was in possession as a trespasser but took the view that he was not entitled to any perpetual injunction against the true owner nor had a right to enter upon the property and he was held to be a trespasser perpetuating his legal occupation and the suit was held not to be maintainable and was decided in favour of the defendants vide judgment and decree dated 22.12.1987.

6. Counsel for the plaintiff-petitioner has raised a solitary argument that once the plaintiff was in possession of the suit property, the Courts below were not justified in dismissing the suit of the plaintiff even if he was ranked as a trespasser.

7. The question of law that thus, arises for consideration of this Court is

as under:

“Whether the plaintiff, being a trespasser, is entitled for injunction against the rightful owner and whether the Courts below were right in dismissing the suit of the plaintiff.”

8. The Apex Court in *Rame Gowda (D) by LRs Vs. Mr. Varadappa Naidu (D) by LRs & another 2004 (1) SCC 769* has settled the position beyond the realm of doubt that a person who is a rightful owner can take possession by adopting the legal means for the dispossession of a trespasser. Relevant observations read as under:

“9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to *Munshi Ram and Ors. Vs. Delhi Administration* (1968) 2 SCR 455, *Puran Singh and Ors. Vs. The State of Punjab* (1975) 4 SCC 518 and *Ram Rattan and Ors. Vs. State of Uttar Pradesh* (1977) 1 SCC 188. The authorities need not be multiplied. In *Munshi Ram & Ors.'s case* (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re- instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In *Puran Singh and Ors.'s case* (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled

possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase 'settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession' :

- i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;
- ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;
- iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and
- iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession."

9. Thus, keeping in view the above settled principle of law, the present appeal is allowed, to the limited extent that the appellant would be entitled to continue in possession and will not be dispossessed, except in accordance with law, by the owners or the successor-in-interest, who will have to seek legal recourse for regaining the possession over the property in dispute. Resultantly, the present appeal is partly allowed, to the extent that the suit was maintainable and the plaintiff is entitled for the abovesaid protection and he can only be dispossessed, in accordance with law.