

IN THE PUNJAB AND HARYANA HIGH COURT  
AT CHANDIGARH

RSA No. 1100 of 2001  
DECIDED ON: OCTOBER 07, 2015

PARBHA

...APPELLANT

VERSUS

RAM KISHAN AND ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. R.N. Lohan, Advocate  
for the appellant.

Mr. KPS Virk, Advocate for  
Mr. K.S. Dhaliwal, Advocate  
for respondent No.1.

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**JASPAL SINGH J**

Instant appeal has been preferred by Parbha against the judgment and decree dated March 09, 2001 passed by lower Appellate Court vide which the judgment and decree dated August 25, 2000 passed by learned trial Court has been set aside vide which suit for permanent injunction was decreed whereas counter claim instituted by the defendant was dismissed.

2. Brief facts giving rise to the instant *lis* are that the suit property is owned and possessed by plaintiff-Parbha since the time of consolidation. He has spent a huge amount on the construction of the house and some portion of the house is fenced with tree branches and possession of plaintiff-Parbha is peaceful and continuous. He has installed Batora in open courtyard and he also tethers his cattle in the suit property and uses the same for residential purpose.

Defendants have no right, title or interest in the suit property and they made an attempt to dispossess the plaintiff forcibly from the house in dispute but their attempt was foiled. Hence, the suit was instituted.

3. Defendants have contested the suit, inter-alia on the ground of locus standi, cause of action, maintainability and estoppel. It is also submitted that plaintiff has not come to the court with clean hands and has not disclosed the real facts and he has concealed the material facts. On merits, it has been averred that the plaintiff is owner only of Khasra No.181/2 (0-5) only whereas he has encroached upon the adjoining land comprised in Khasra Nos. 54/3, 54/4, 54/2 and the area of street bearing Khasra No. 54/5 under the garb of the present suit, which has necessitated the filing of counter claim seeking possession of the aforesaid areas.

4. Replication controverting the averments raised by the defendants had filed, submitting that defendants are neither owners nor in possession of the suit land. Gram Panchayat of village Todi Kheri had passed a resolution No. 17 dated 19.08.96 cancelling the allotment of the plots in favour of the defendants as they violated the terms and conditions of the allotment made by Commissioner & Secretary to Govt. of Haryana vide order dated 28.01.1974 and did not raise the construction on their plots within one year from the date of allotment. Neither the defendants were put in possession of plots nor they raise any construction. Thus, allotment in their favour stood cancelled. The plea of adverse possession has also been raised in the replication by the plaintiff.

5. Following issues were framed by learned trial court:-

1. Whether the plaintiff is owner in possession of the suit land, as alleged ? OPP

2. If issue No. 1 is proved, then whether the plaintiff is entitled to the relief of injunction as prayed ? OPP
3. Whether the plaintiff has no locus standi to file the present suit ? OPD
4. Whether the suit of the plaintiff is not maintainable in the present suit ? OPD
5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
6. Relief.

6. While assailing the judgment and decree passed by the ld. appellate court vide which the judgment and decree dated August 25, 2000 passed by the ld. trial court has been set aside, it has been argued with vehemence by learned counsel for the appellant that it is absolutely against the evidence available on file and settled canons of law. The well reasoned judgment passed by the ld. trial court has been set aside by the ld. appellate court on the basis of conjectures and surmises and simply observing that plaintiff-appellant has failed to establish his title as well as possession over the property in suit. Further, it has been observed that there is nothing on the record to suggest that plaintiff-appellant has become the owner of suit property by way of adverse possession. However, ld. lower appellate court has lost sight of the legal proposition that a person in established possession over the property has right to protect his possession against all other persons and he cannot be dispossessed except in due course of law. In the case in hand, there is a categorical admission of the defendants-respondents that the plaintiff-appellant is in possession of the property in suit. In this regard, learned counsel for the appellant has referred to para 7 of the written statement. Thus, he can only be evicted or ejected from the disputed property by adopting the proper procedure and not by use of force. Moreover, defendants-respondents have also filed a

counter claim seeking possession of the property in dispute, which is also suggestive of the fact that defendants are not in possession of the property in suit. Rather, it lies with the plaintiff-appellant. So, the impugned judgment and decree dated March 09, 2001 passed by the District Judge, Jind whereby the judgment and decree of the ld. trial court dated August 25, 2000 has been set aside, is not sustainable in the eyes of law and is liable to be dismissed by way of acceptance of instant appeal and judgment and decree passed by the trial court deserves to be affirmed.

7. On the other hand, learned counsel for the respondents has supported the judgment and decree dated March 09, 2001 passed by ld. lower appellate court submitting that there is no infirmity or illegality in the impugned judgment and decree and that the suit has rightly been dismissed and the judgment and decree passed by the trial court has been rightly set aside by reversal of findings.

8. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the parties and has scanned the impugned judgments and decrees as well as records available.

9. Undoubtedly, there is nothing on record to suggest that appellant-plaintiff is owner of the suit property. Though, it has been alleged that he is the owner by way of adverse possession but there is no substantive evidence in this regard. However, there is a categorical admission of respondents-defendants, not only in para No. 7 of the written statement filed by them but also in the shape of their testimonies. Moreover, the respondents-defendants have also filed a counter claim seeking possession of the property in suit. In other words, the possession of the appellant-plaintiff has been admitted by the respondents

-defendants. In view of the admitted facts that the appellant-plaintiff is in established possession of the property in suit, he can not be ejected or evicted without adopting appropriate procedure required for the same. The respondents- defendants can not be allowed to take the law into their hands to dispossess the appellant-plaintiff by use of force. At the same time, nothing has also been brought by the respondents-defendants that they are the owners of the land in dispute. Rather, there appears some boundary dispute. Be that as it may as has been observed above, the appellant-plaintiff was in exclusive possession of the property in suit, is entitled to protection. Thus, it was rightly observed by the ld. trial court that appellant-plaintiff is entitled to the decree for permanent injunction except in due course of law. The impugned judgment and decree dated March 09, 2001 passed by the lower appellate court being against the evidence available on file and settled canons of law, is liable to be set aside.

10. In the light of what has been discussed above, this Court is of the considered view that the judgment and decree passed by the lower appellate court dated March 09, 2001 is against the evidence available on file and settled canons of law and is liable to be set aside by way of acceptance of instant appeal. Consequently, the judgment and decree passed by the ld. trial court is restored but with no order as to cost.

October 07, 2015  
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**(JASPAL SINGH)**  
**JUDGE**