

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

Regular Second Appeal No.4880 of 2011 (O&M)

Date of decision: 6.7.2015

Bhag Chand

... Appellant

Versus

Gram Panchayat and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Vaneet Soni, Advocate,
for the appellant.

Mr.N.P.S.Mann, Advocate,
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

The only point on which the matter was adjourned after hearing the learned counsel was for the appellant was to show whether law protects even a rank trespasser or squatter on public land with the due process of the law if Gram Panchayat were to recover peaceful possession of the land brought into civil dispute.

The learned counsel for the appellant has referred to three judgments, two of the Supreme Court and from this Court. In both the rulings of the Supreme Court relied on, the persons sought to be dispossessed by the true owner were in settled possession of agricultural

land tilled by them to the knowledge of the plaintiffs. This was broadly the position in **Rame Gowda (D) by Lrs v. Mr.Varadappa Naidu (D) by Lrs and another**; 2004 (1) RCR (Civil) 519 while in **Krishna Ram Mahale (dead) by his legal representatives v. Mrs.Sbhobha Ram Venkat Rao**; 1990 (1) RCR (Rent) 525, the Court dealt with a licensee-trespasser. The Court was of the view that the owner has every right to throw out the trespasser while the trespasser is in the process of trespassing but the right, however, is not available to the owner if the trespasser has been successful in accomplishing recovery of possession. Then the owner can dispossess the trespasser by taking recourse to law. The property in dispute in that case was a shop in which the business of a restaurant was being run within a determinable confined place but in the present appeal, the land of which possession is claimed for over 30 years is a patch within the *abadi deh* adjoining the dwelling of the plaintiff where he is alleged to have been using the open space as a *chobara* for drying cow-dung cakes used for fuel. The space in dispute is open to sky land and the Gram Panchayat is the respondent claiming that the appellant does not lawfully possess the suit property and is an encroacher of village common property. Both the Courts below have returned findings of fact holding the appellant not to be in possession of the property in dispute and, therefore, the trial Court was within its jurisdiction to deny injunction in a suit for permanent injunction filed by the plaintiff, appellant in this appeal, to protect his possession by court orders.

In the third case cited, that is, in **Gram Panchayat Bilaspur v.**

Nafe Singh and others; RSA No.266 of 2014 decided on February 26,

2015 and relied upon, is of the learned single judge of this Court which says much the same thing in proliferation of the principle laid down in the other two binding rulings. When plaintiff failed to establish possession over the suit land, not to speak of settled possession, there was hardly any occasion for the civil court to issue a permanent injunction in favour of the plaintiff restraining defendant from dispossessing him except in accordance with law. It may be mentioned that the suit was not based on title and only asserted possession and, therefore, even the appellant does not claim ownership of the disputed property. I do not find any error in the appellate decree warranting interference in pure findings of fact with respect to lack of possession over the property in dispute. No question of law arises in the appeal, much less substantial.

No ground for interdiction on the second appeal side is made out in the case.

The appeal is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

July 6, 2015

Paritosh Kumar