

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

-.-

Date of Decision: 10.12.2015.

1. R.S.A No. 3414 of 2012

Banwari & Ors.

.....Appellants

Versus

Krishan Chand & Ors.

.....Respondents

2. R.S.A No.3520 of 2012

Bijendra & Ors.

.....Appellants

Versus

Krishan Chand & Ors.

.....Respondents

3. R.S.A No. 896 of 2013

Rameshwar & Ors.

.....Appellants

Versus

Krishan Chand & Ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present:- Mr. B.S.Rana, Senior Advocate, with
Ms. Anu Singh, Advocate, for the appellants
in R.S.A No. 3414 & 3520 of 2012

Mr. Shiv Kumar, Advocate,
for respondent Nos. 7, 8, 10, 11, 13 to 23, 25, 27, 30 to 32
in R.S.A 3414/12 and for appellants in R.S.A No.896 of 2013.

Mr. Sameer Sachdeva, Advocate, for respondent Nos. 4 and 5
in RSA No. 3414/12, 3520/12, 896/13.

AMIT RAWAL, J

This order of mine shall dispose of three Regular Second Appeals, at the instance of plaintiffs. The plaintiffs are aggrieved of the judgment/decreed of both the Courts below, whereby the suit for permanent injunction restraining against the defendants from forcible dispossession from Jhuggies/pucca house/small shops etc. as they are in settled possession, has been declined on the ground that appellants cannot seek the right of ownership by way of adverse possession. Plaintiffs have placed on record documentary evidence such as ration card etc, to show that appellant are in long and settled possession. The only argument, which weighed in the minds of the Courts below is that no injunction can be passed against true owner. Thus submits that the following substantial question of law arises for determination by this Court:-

1. Whether the present/plaintiff who are in long and settled possession of the property can be dispossessed except in due course of law or not?

Mr. Sameer Sachdeva, Advocate, appearing on behalf of the defendants has relied upon the judgment of Hon'ble Supreme Court in **Premji Ratansey Shah Vs. Union of India**, 1994(5) SCC 547 and submits that as per case law no injunction can be granted against true owner. The relief of adverse possession cannot be sought in affirmative.

The appellants/plaintiffs are tress passers.

I have heard learned counsel for the parties and appraised the paper book.

The judgment cited by Mr. Sameer Sachdeva, Advocate, is not consonance in view of the subsequent judgment passed by Hon'ble Supreme Court in **Rame Gowda Vs. M. Varadappa Naidu** reported in (2004) 1 SCC 769. It has been laid down in that judgment that a person who has been in long and settled possession, cannot be dispossessed except due course of law even if injunction has been sought against the true owner. Once the appellant/plaintiff was found to be long and settled possession, the injunction had to be granted in their favour.

I am of the view that the judgment/decrees passed by both the Courts below are set aside as the question of law is answered in favour of the appellant-plaintiffs and against the respondent-defendants, viz-a-viz only relief of permanent injunction only.

Keeping in view the aforementioned facts and circumstances, the appeals stand allowed.

December 10, 2015
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(AMIT RAWAL)
JUDGE