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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 15.10.2015

+ **RSA 353/2015**

PREM CHAND INDRIYAS Appellant

Through: Mr. Ashwani Goel, Adv.
Mr. Rajeev Kumar, Adv.

versus

CALMANT KOTI & ORS Respondent

Through: Mr. Alok Sharma, Adv.
Ms. Swati Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. I have heard learned counsels for the parties on admission.
2. Admit.
3. The following substantial question of law arises for consideration in the present second appeal:

Whether the judgment and the decree of the first Appellate Court whereby the first appeal of the respondent is allowed, suffers from perversity?

4. The issue involved is rather small and both the counsels have addressed their arguments on the appeal itself. Accordingly, I proceed to dispose of the appeal.

5. The appellant/plaintiff had filed a suit for permanent injunction and mandatory injunction. The respondent Nos. 1 to 4 were impleaded as the first four defendants and the SHO, Police Station, Karol Bagh, had been impleaded as 5th defendant.

6. The case of the plaintiff in the suit was that the Baptist Church, Karol Bagh was constructed on two plots i.e. 3367- 3368, Gali no.2, Christian Colony , Karol Bagh, New Delhi. He stated that he is residing in two rooms along with kitchen and bathroom in the said Church. He stated that he works as a Church Bearer for the upkeep and maintenance and also as watchman without any consideration. For his services, the Church has provided him with the aforesaid accommodation to reside with his family. He claimed that the suit property has been provided to him by the Baptist Missionary Society vide their letter dated 04.05.2004. He claimed that defendant Nos. 1 to 4 has no concern with the affairs of the Church, and they are miscreants. They want to forcibly occupy the whole Church building and the suit property wherein he is residing. He claimed that the defendants visited the suit premises on 29.12.2009 along with some *goonda* elements and threatened the plaintiff and his family members to forcibly dispossess him from the suit premises. Another attempt was made on 13.02.2010, and again on 13.08.2010. He stated that the defendants disconnected his electricity connection. He reported the matter to the police on several occasions such as 24.07.2009, 14.03.2011, 26.06.2011, 04.08.2011 and 26.09.2011 but no

action was taken against the defendants. He sent a legal notice on 29.03.2012 to the defendants but to no avail. He stated that on 16.07.2012, defendant No. 1 tried to forcibly dispossess him from the suit property by throwing out his articles. In the aforesaid background, he filed the suit in question seeking a restraint against his forcible dispossession. He also prayed for a mandatory injunction, seeking a direction to the defendants to restore his electricity supply and drainage system.

7. The defendants, in their written statement, stated that the original owners i.e. Baptist Church Trust Association has terminated the plaintiff's licence to use and occupy the suit premises vide letter dated 05.07.2011. The plaintiff had been called upon to vacate the suit premises. The plaintiff has also given an undertaking on 04.05.2004 to vacate the suit premises. However, he has instead filed the present suit.

8. Issues were framed in the suit which are as follows:

- (1) Whether the plaintiff is entitled to the decree of permanent and mandatory injunction as prayed for. OPP
- (2) Whether the suit is bad for non-joinder of necessary parties?
OPD
- (3) Relief.

9. The plaintiff examined himself as PW1. He exhibited several documents. Some of the documents were also marked. He examined one Shri Jagdish Kalyan as PW2, who claimed to be member of the Baptist Church since his birth. He, inter alia, deposed that in the year 2004, the

plaintiff had been appointed as the Church bearer. He supported the plaintiff's case that the defendants were threatening the plaintiff of dire consequences if he did not leave the premises. He also examined one Shri Munga Lal Sharma as PW3-watchman of the Baptist Primary School, Karol Bagh. He stated that he had been seeing the plaintiff residing in the suit premises along with his family members in his capacity as Church bearer appointed by the Managing Committee. He also supported the plaintiff's case that the plaintiff was being harassed by the defendants who had also disconnected his electricity supply and created obstruction in the drainage system. One more witness was examined as PW4. Defendant No. 1 examined himself as DW1. He led in evidence certain documents, including some correspondence.

10. The trial court, on the basis of the evidence led by the parties, concluded that, admittedly, the plaintiff was in possession of the suit property. The trial court held that the plaintiff could not be dispossessed except by following the due process of law. Consequently, the relief of permanent injunction was granted to him. However, the relief of mandatory injunction was not granted since the plaintiff could not establish that the amenity of electricity was provided to him by the Church. He did not lead evidence as to when the electricity connection was disconnected. He also did not establish as to in what manner, drainage system had been obstructed by the defendants.

11. The first appeal preferred by the respondents was allowed by the first appellate court on the premise that the appellant-plaintiff had not come to the court with clean hands. Though, he was permitted to occupy one room,

he was in occupation of two rooms, kitchen and bathroom for which he offered no explanation. The first appellate court also observed that the appellant-plaintiff had not been able to establish any of the incidents alleged against the defendants of his being threatened with dispossession. Consequently, the appeal was allowed and the suit was dismissed.

12. The submission of learned counsel for the appellant is that, admittedly, the respondents are not the office bearers of the Baptist Church Trust Association (BCTA). Learned counsel submits that the appellant had been inducted as a licensee since he was appointed as a Church bearer. He submits that only the BCTA is entitled to remove the appellant from the suit premises and the respondents-defendants not being the office bearers of BCTA have no authority to disturb his use and occupation of the suit premises. He further submits that BCTA has instituted a separate suit against him for possession which is still pending. Learned counsel, therefore, submits that the appellant is entitled to the relief of injunction against the respondents. In this regard, he has placed reliance on the following decisions;

(i) ***Prataprai N. Kothari Vs. John Braganza*** AIR 1999 SC 1666;
and

(ii) ***Balwan Singh Vs. Jaipal Singh*** 2007(7) AD (Delhi) 246

13. On the other hand, learned counsel for the respondent submits that the respondents have never threatened the appellant of dispossession. Learned counsel submits that no cause of action arise in favour of the appellant-plaintiff against the respondents-defendants to file the suit in the first instance.

14. Having heard learned counsels and perused the record, I am of the view that the first appellate court was not justified in disturbing the judgment and decree passed in favour of the appellant-plaintiff by the trial court. As to whether or not the appellant had encroached upon an additional area was a question which could not have been answered when the BCTA itself was not even a party to the suit. The appellant-plaintiff had not filed the suit to claim any relief against the BCTA. The suit had been filed to seek relief only against the respondents-defendants as, according to the appellant-plaintiff, it was the respondents-defendants who were threatening him with dispossession and causing obstruction in his use and enjoyment of the suit premises even when they had no concern with the BCTA. The said respondents/defendants were not concerned whether, or not, the appellant had encroached on any portion of the Church. The respondents admittedly are not the office bearers of BCTA. The Church in question belongs to BCTA. The suit of BCTA is separately filed and pending against the appellant.

15. In *Prataprai N. Kothari* (supra), the Supreme Court, inter alia, observed that a person who has been in long continuous possession can protect the same by seeking an injunction against any person in the world other than the true owner. Similarly, this Court in *Balwan Singh Vs. Jaipal Singh* (supra), observed that a person who has been in long continuous possession can protect the same by seeking an injunction against any person in the world other than the true owner. Since the respondents are not the true owners of the suit property, the appellant was entitled to seek injunction against the respondents. Pertinently, the respondents themselves stated that

they have not sought to disturb the possession of the appellant in the suit premises. That being the position, there was no reason not to injunct them from doing so in future. Accordingly, the substantial question of law is answered in favour of the appellant and the impugned judgment of the first appellate court is set aside. The judgment and decree passed by the trial court is restored.

16. The appeal stands allowed in the aforesaid terms. The parties are left to bear their respective costs.

17. It is made clear that nothing stated in this judgment shall, in any way, affect the right of BCTA in suit filed against the appellant.

VIPIN SANGHI, J

OCTOBER 15, 2015
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