

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2361 of 1988

Date of Decision: 01.02.2016

Darya Singh

.....Appellant

Vs

Pritam Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.K. Gupta, Advocate
for the appellant.

Mr. J.K. Khetarpal, Advocate for
Mr. Sudarshan Goyal, Advocate
for respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Plaintiff is in second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for permanent injunction.

[2]. The substantial question which can be appreciated in the appeal is as to whether established possession of the plaintiff/appellant can be termed to be un-authorised resulting in refusing grant of injunction?

[3]. Plaintiff filed suit for permanent injunction against the

defendant restraining him from dispossessing him from the suit land on the ground that the suit land was leased out to him by the then Mahant of the Dera Shri Prem Singh Chela Baba Phul Singh of Dera Sadhan Nirmala Rohera, who was the then Mahant and *Mohatmin* of the Dera through a registered lease deed No.1279 dated 09.10.1974 (Ex.PA) at a fixed rent. The lease was to expire on 15.06.1985. The plaintiff was in cultivating possession of the land under lease on fixed rent which was being paid by him to the original owner. The suit came to be filed on 19.04.1984 before the expiry of the lease period.

[4]. Plaintiff alleged that Mahant Prem Singh had died and the defendant claimed himself to be the *Mohatmin* of Dera and started threatening the plaintiff of forceable dispossession.

[5]. The suit was contested by the defendant, who admitted that suit land was owned by Dera Sadhan Nirmala, village Rohera and it was leased out to the plaintiff by Prem Singh the then Mahant of the Dera through registered lease deed dated 09.10.1974 (Ex.PA) at a fixed rate. The lease deed was amended on the request of the plaintiff-lessee on 17.05.1977 and the time period of lease deed was reduced to ten years and rate of rent was also re-fixed as Rs.170/- per acre annually. The period of ten years had expired on 08.10.1984 and thereafter on

11.04.1985, cancellation of lease deed was executed vide cancellation deed No.170 dated 11.04.1985 (Ex.D-1) and, therefore, possession of the plaintiff after 11.04.1985 was claimed to be un-authorised as plaintiff stopped making payment of rent. Defendant contested the suit on all counts of maintainability, cause of action and the suit being false and frivolous.

[6]. After filing of replication, both the parties went to the trial on following issues:-

- “1. Whether the plaintiff is in possession of the suit land as lessee under the real owner? OPP*
- 2. Whether the plaintiff is entitled to the injunction prayed for? OPP*
- 3. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 4. Whether the plaintiff is estopped from filing the present suit by his act and conduct? OPD*
- 5. Whether the suit is not maintainable in the present form? OPD*
- 6. Whether the plaintiff has no cause of action? OPD.*
- 7. Relief.”*

[7]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[8]. Trial Court dismissed the suit vide judgment and decree

dated 03.02.1988. Plaintiff remained unsuccessful in First Appeal before the lower Appellate Court which was dismissed on 28.09.1988 by Additional District Judge, Jind.

[9]. Learned counsel for the appellant contended that the possession of the plaintiff over the suit land has been established on account of his entry on the suit land by lawful means i.e. registered lease deed. The factum of possession was duly recorded in the revenue record. By cancellation of lease deed vide registered cancellation deed dated 11.04.1985, possession of the plaintiff was never effected as he remained in continuous possession. It was a suit for permanent injunction which was filed by the plaintiff on the basis of his possessory right of lessee. No cross suit was filed by the defendant, nor any counter-claim was set up in the written statement.

[10]. During the course of First Appeal before the lower Appellate Court an application under Order 6 Rule 17 CPC was filed by the defendant, seeking amendment of the written statement as he wanted to set up plea of counter-claim by claiming possession. The application was dismissed on 19.08.1987 by the lower Appellate Court and the said order was never assailed by the defendant in any Forum. Even, no cross appeal was filed before this Court.

[11]. Admittedly the plaintiff was inducted as a tenant in the

suit land. In a suit for permanent injunction filed by the plaintiff, the nature of possession as on date cannot be appreciated in terms of cancellation deed as the initial induction of the plaintiff was on lawful note, therefore, in view of law laid down by the Hon'ble Apex Court in **Rame Gowda (D) by LRs. vs. Mr. Varadappa Naidu (D) by LRs and Anr., 2004(1) RCR (Civil) 519** injunction can be granted in favour of the plaintiff, who is in settled possession. Even, if, the defendant has claimed that the possession of the plaintiff is that of trespasser after cancellation of lease deed, still he can only be ejected in due course of law for which an unsuccessful attempt was made by the defendant himself by seeking amendment of the written statement at lower Appellate stage vide which defendant intended to set up a counter-claim for seeking possession.

[12]. Plaintiff being in possession of the suit land can protect his possession unless and until ejected in due course of law. It is a settled principle of law that once the entry of a person in the property is by way of lawful means and thereafter his possession becomes un-authorised on account of happening of certain events, then in such a situation he can be ejected in due course of law. As against this a person who is a rank trespasser i.e. having trespassed the suit land not on account of any permissible mode of entry, then such person cannot claim

protection of due course of law. Such person can be ejected at any time and he cannot claim injunction against true owner. The law laid down in **Rama Gowda (D) by LRs'** case (supra) was subsequently followed in **Subramaniaswamy Temple, Ratnagiri vs. V. Kanna Gounder (dead) by LRs, 2009(3) SCC 306.**

[13]. In the light of aforesaid, even if, cancellation deed dated 11.04.1985 was executed and thereafter plaintiff remained in possession in un-authorized manner, the plaintiff can be ejected in due course of law as his entry in the suit land was on account of lawful means.

[14]. At the time of admission of the appeal on 06.12.1989, following order was passed:-

“The question of law raised in this Regular Second Appeal is whether a trespasser is entitled to a limited decree for injunction restraining a person with a better title than himself from dispossessing except in accordance with law. The learned first Appellate Court relying on Amrao Singh Sarpanch and others v. Sanatan Dharam Sabha Chandigarh, 1984 P.L.J. 542, came to the conclusion that the trespasser was not entitled to an injunction against a person with a better title than himself. Amrao Singh (supra) relied on M. Kallappa Setty v. M.V. Lakshminarayana Rao, AIR 1972 SC 2299. In that case the plaintiff sought two reliefs in the suit. They were (i) declaration of his title

as owner of a building site, and (ii) permanent injunction restraining the defendant from forcibly dispossessing the plaintiff. In para No.5 of the report, it was held that the plaintiff can on strength of his possession resist interference from persons who have no better title than himself to the suit property. In the same paragraph, however, their Lordships further observed that on the findings arrived at by the fact finding courts as regards possession, the plaintiff was entitled to the second relief asked for by him even if he had failed to prove his title satisfactorily. It may be mentioned that the Supreme Court affirmed the finding of the High Court that the plaintiff failed to satisfactorily prove his title and thus was not entitled to the relief mentioned as No.(i) above. At the same time it is significant that the plaintiff was held entitled to the second relief of permanent injunction. It was made clear that the granting of injunction did not debar the opposite party from taking appropriate proceedings independently to recover possession on the basis of their alleged title.

The above conclusion of mine finds support in several authorities of this Court, namely Kanwar Pal and another v. Om Parkash and others, 1985 P.L.J. 147 and Isher Singh vs. Badan Singh alias Battan Singh and others, 1988 P.L.J. 26. The appeal raises a substantial question of law mentioned in the beginning of this order. I, therefore, admit the appeal. It is made clear in terms of M. Kallappa Setty's case (supra) that it will be open to the respondent Pritam Singh Mahant of the dera to institute a suit for the recovery of

possession on the basis of title. The suit, if instituted, will be disposed of according to law.”

[15]. At the time of arguments of the appeal, it was made clear that it was open to the respondent Pritam Singh Mahant to file a suit for recovery of possession on the basis of title and in the event of filing of such suit the same was required to be disposed of in accordance with law.

[16]. Learned counsel appearing on behalf of respondent could not inform the Court as to whether such a suit was filed by the defendant or not?

[17]. Be that as it may, the fact remains that plaintiff was inducted as tenant and he continued to occupy the suit land despite the cancellation of lease, therefore, injunction can be granted to the plaintiff that he can be ejected in due course of law.

[18]. With the aforesaid observation the impugned judgments and decrees passed by the Courts below are set aside. Appeal is accepted, with no order as to costs.

February 01, 2016

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**(RAJ MOHAN SINGH)
JUDGE**