

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.1672 of 2012 (O&M)

Date of Decision.11.08.2016

Amrik Singh son of Mohan Singh

.....Appellant

Vs.

Nirmal Singh (now deceased) through LRs and others

.....Respondents

Present: Mr. S.S. Deol, Advocate
for the appellant.

Mr. Vikas Arora, Advocate
for respondent No.1.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

AMIT RAWAL J. (ORAL)

The appellant-plaintiff is aggrieved of the concurrent finding of fact and law whereby the suit for grant of injunction in respect of house measuring 4 marlas despite the fact that there had been an observation, much less, admission of the other side that he had been in long and settled possession, has been dismissed.

Mr. S.S. Deol, learned counsel appearing for the appellant-plaintiff in support of his contention relies upon judgment rendered by Hon'ble Supreme Court in **Rame Gowda (D) by LRs Vs. M. Varadappa Naidu (D) by LRs (2004) 1 SCC 769** to contend that if the person has been able to prove long and settled possession, he cannot be dispossessed except in due course of law. He also does not dispute the fact that respondent-defendant has already filed suit for possession.

He has also drawn attention of this Court to the finding rendered by the trial Court, upheld by the lower Appellate Court, that where a person is in wrongful possession, no injunction can be granted against the

decrees passed by both the Courts below by formulating the substantial questions of law drawn in the memorandum of appeal.

Per contra, Mr. Vikas Arora, learned counsel appearing for respondent No.1 submits that the appellant-plaintiff has filed a suit for declaration and consequential relief of injunction which has been dismissed by both the Courts below, in essence, he has not be able to prove the title in the property. He further submits that the suit filed for possession is pending adjudication. I am of the opinion that following substantial question of law arises for determination in the second appeal:-

“Whether a person found to be in long and settled possession can be dispossessed, except in due course of law?”

I have heard learned counsel for the parties and appraised the paper book. The *ratio decidendi* culled out from the judgment of Supreme Court in **Rame Gowda's** case (supra) is no longer in dispute. The plaintiff's evidence as well as documentary evidence on record proves him to be in long and settled possession and filing of the suit at the behest of the defendants tantamounts to admission of plaintiff's possession. The innocuous relief sought in the suit is that he should not be dispossessed except in due course of law.

For the foregoing reasons, I am of the view that all the aforementioned facts have not been noticed by the Courts below and thus, there is illegality and perversity in the judgments and decrees passed by both the Courts below. The judgments and decrees passed by the Courts below are set aside and the suit of the plaintiff is decreed. The defendants are restrained from taking forcible possession, much less, interfering with the peaceful possession of the plaintiff over the suit property except in due

course of law.

The second appeal is allowed. Decree sheet shall be prepared accordingly.

(AMIT RAWAL)
JUDGE

August 11, 2016		
Pankaj*	Whether speaking/reasoned	Yes
	Whether reportable	No