

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8778 OF 2016

GANPAT DINKAR PACHPUTE AND OTHERS
VERSUS
ANGNATH PATILBA PACHPUTE

Advocate for PetitionerS : Shri N.V. Gaware.
Advocate for Respondent : Shri N.B. Narwade.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 29th June, 2017

PER COURT :-

1. The petitioners / original plaintiffs are aggrieved by the judgment dated 23/06/2016, delivered by the Appellate Court, by which, Miscellaneous Civil Appeal No. 95/2014 is allowed and the order dated 19/04/2014, passed by the learned Trial Court in R.C.S. No. 231/2013, below Exhibit 5 granting injunction under orders XXXIX Rule 1 and 2 of the Code of Civil Procedure ("CPC"), has been set aside.

2. I have considered the submissions of the learned advocates for the respective sides and have gone through the

petition paper book with their assistance.

3. The Hon'ble Apex Court in the matter of Rame Gowda Versus M. Varadappa Naidu, [2004 (3) BCR 788] has concluded in paragraph Nos. 8, 9 and 10 as under :

"8. It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In

the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. *It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to **Munshi Ram and Ors. v. Delhi Administration** - : 1968 Cri LJ 806 , **Puran Singh and Ors. v. The State of Punjab** - : AIR 1975 SC 1674 and **Ram Rattan and Ors. v. State of Uttar Pradesh** - : 1977 CriLJ 433 . The authorities need not be multiplied. In **Munshi Ram & Ors.'s case** (supra), it was held that no one, including the true owner, has a*

right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is, entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In **Puran Singh and Ors.'s case** (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase settled possession does not carry any special charm or magic in it nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid down the

following tests which may be adopted as a working rule for determining the attributes of 'settled possession':

i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take

forcible possession.

10. *In the cases of Munshi Ram and Ors. (supra) and Puran Singh and Ors. (supra), the Court has approved the statement of law made in **Iloram v. Rex** - : AIR 1949 All 564 , wherein a distinction was drawn between the trespasser in the process of acquiring possession and the trespasser who had already accomplished or completed his possession wherein the true owner may be treated to have acquiesced in: while the former can be obstructed and turned out by the true owner even by using reasonable force, the later, may be dispossessed by the true owner only by having recourse to the due process of law for re-acquiring possession over his property."*

4. The dispute between the petitioners and the respondent is with regard to 62 Ares of land. The description of the suit property as well as adjoining property is mentioned on page No. 2 of the Civil Suit, which has been filed by the petitioners / plaintiffs for declaration and perpetual injunction. In the written statement filed by the defendant, it is specifically stated

in paragraph No. 21 that plaintiff Nos. 1 and 2 have illegally acquired possession of 0.52 Ares as is shown in the map appended to the plaint. The defendant had requested for possession of the said encroached land. Rather than handing over the possession, the plaintiffs have threatened and abused the defendant.

5. It appears from the record that the defendant had contended that he was put in possession of the said suit land by virtue of the sale deed dated 22/07/1988. He held possession till 24/12/2010. On that day, when he was out of station, the plaintiffs have caused encroachment and have grabbed the possession of the suit land. Consequently, the defendant had preferred R.C.S. No. 271/2013, before the same Court where in the suit of the petitioners' R.C.S. No. 231/2013 is pending and the defendant has claimed recovery of possession. It cannot be ignored that the suit filed by the petitioners is earlier in point of time in relation to the suit filed by the defendant.

6. The Trial Court had granted interim injunction by order

dated 19/04/2014, to the plaintiffs below Exhibit 5. In the Appeal preferred by the defendant, the Appeal Court has set aside the order of the Trial Court on the ground that the revenue records indicate that the defendant is in possession. It appears that the Appeal Court failed to note that the defendant had contended that he was dispossessed forcibly from 22/10/2012. All these aspects as to whether the plaintiffs have forcibly dispossessed or whether the suit land belongs to the defendant, need to be considered. The situation becomes even further curious as both the sides have filed suits against each other which are pending before the same Court.

7. Considering the above, I deem it appropriate to follow the course adopted by this Court in the case of Baban Anantrao Naik Versus Pramila Uttamrao Yenure and another [2011 (6) All.M.R. 15], of directing the parties to maintain status quo in the light of their pleadings and directing the Trial Court to decide R.C.S. No. 231/2013, expeditiously.

8. As such, this petition is partly allowed by directing the

parties to maintain status quo and specifically in tune with their pleadings before the Court, till the final disposal of the suit. The impugned order of the Appeal Court dated 19/04/2014, shall stand modified accordingly.

9. The Trial Court shall make an effort to decide R.C.S. No. 231/2013, as expeditiously as possible and preferably on or before the 30th day of April, 2018. Needless to state, the plaintiffs are directed not to create third party interest and shall not alienate the suit land admeasuring 62 Ares. It is left open to the litigating sides to move an application before the the appropriate authority for clubbing their two suits in the event of there being no other impediment.

(RAVINDRA V. GHUGE, J.)

S.P.C.