

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

**Regular Second Appeal No.4846 of 2016 (O&M)
Date of decision: 16.05.2017**

Sukhwinder Singh

..Appellant

Versus

**Central Government through District Collector, Ferozepur
and others**

..Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ajay Pal Singh Srawaan, Advocate,
for the appellant.

ANITA CHAUDHRY, J.

This is the plaintiff's second appeal aggrieved by the dismissal of the suit and the appeal.

The plaintiff filed a suit seeking injunction restraining the defendants from dispossessing him from 11 kanals of land fully detailed in the plaint. The Railway Department, admittedly, is the owner. The plaintiff claims that Ajmer Kaur, his mother was in possession for the last 50 years and the State had not demanded any 'lagan' and they were trying to forcibly dispossess him.

The suit was withdrawn as against defendant no.2. Defendants no.1 and 4 were proceeded against ex-parte.

Defendant no.3 took the plea that the land was owned by the Central Government and on both the sides of the railway line, land/space had been left by the Government for their use and maintenance.

Both the sides led evidence. The plaintiff produced the khasra girdwari to show that his mother was recorded to be in long possession from

1998 till 2001. Copy of the policy Ex.PW3/A was filed to show that the policy for Grow More Food Scheme was floated under which the Railway Department was planning to allot this land.

The case of the plaintiff is that since he was in possession, the land could not be given to any other person and the land should be allotted to him and he could not be dispossessed except in due course of law.

The trial Court held that the plaintiff was not entitled to any injunction as he had led no evidence to show how they entered possession. The suit was dismissed. The appeal preferred by the plaintiff was also dismissed.

I have heard counsel for the appellant at great length and have perused the jamabandi for the year 2008-2009, which records the possession of Ajmer Kaur. She had died in 1992. The revenue record still records her possession. The plaintiff had been unable to show how they came to occupy the land. Admittedly, the plaintiff or his mother have never paid any rent. The land was not leased to them. The plaintiff's mother had illegally encroached over the property.

It would be necessary to refer to the position of law as settled by the Apex Court as well as by the rulings of different Hon'ble High Courts. In **Mahadeo Savlaram Shelke v. The Pune Municipal Corporation, 1995(2) Civil Court Cases 258: 1995(2) RRR 66(SC)**, the Apex Court has clearly given a mandate that a person in unlawful possession has no legal right to claim injunction against the true owner. This position has been re-affirmed in **Premji Ratansey Shah v. Union of India, 1995(3) Recent Revenue Reports 11 (Supreme Court of India)**. In **Gurcharan Singh v. District/Chief Agricultural Officer, Jalandhar, 1997**

(1) Civil Court Cases 201: 1997(1) RCR(Civil) 1 (Punjab and Haryana High Court), it has been observed that person having no interest or right in the property or where his possession is not lawful, is not entitled to injunction.

Now, it is to be answered whether such a person who is in occupation of the land/property without any right, valid title, grant, lease or licence, should be protected and whether any injunction in favour of such a person should be granted or not. Injunction is an equitable relief. The Hon'ble Supreme Court in Premji Ratansey Shah v. Union of India, 1995 (3) Recent Revenue Reports 11, held that injunction is a personal right and the plaintiff must have personal interest in the matter and that injunction cannot be issued against true owner. It was also observed that injunction cannot be issued in favour of a trespasser or a person who has gained unlawful possession as against the owner and the pretext of dispute or identity cannot be an excuse to claim injunction against true owner.

The rights of a true owner are to be protected. The Hon'ble Supreme Court wanted to protect the rights of a trespasser against other person who also claims possession over the property but the Supreme Court never wanted to protect the rights of a trespasser against the true owner. That is why, it is said that a trespasser can protect his possession against the entire world except the true owner.

This position of law was further answered in Mahadeo Savlaram Shelke v. The Pune Municipal Corporation, 1995(2) Civil Court Cases 258: 1995(2) RRR 66(SC) and Sri Hanumanthappa v. Sri Muninarayanappa, reported in 1997(1) Civil Court Cases 90: 1997(1) RCR(Civil) 697 (SC), where it was observed that a person who is in

unlawful possession of the property has no legal right to claim injunction against the true owner.

In *Saraswati and others v. Hazari Lal and others, 1990 CCC 21: 1990(1) RRR 85 (P&H)*, the Andhra Pradesh High Court held that merely because a true owner cannot evict a trespasser forcibly, it does not follow that a trespasser can obtain injunction as of right against the true owner. The remedy of permanent or temporary injunction is, it is well settled, basically an equitable relief and the plaintiff must come to court with clear hands. The plaintiff cannot be, therefore, normally be permitted to seek the aid of the court to protect his unlawful possession for seeking injunction against the true owner.

In *Prataprai N. Kothari v. John Braganza, 1999(3) RCR (Civil) 119*, the Supreme Court held as follows:-

“A person who has been in long continuous possession can protect the same by seeking injunction against any person in the world other than the true owner. Even the owner of property can get back his possession only by resorting to due process of law.”

In *Lallu Yashwant Singh v. Rao Jagdish Singh, AIR 1968 Supreme Court, 620*, the position of the plaintiff at the first instance was under a valid right and, later on, that right extinguished. In those circumstances, it was observed that the possession of the trespasser should be protected. In the present case, there is nothing on the record to show under what circumstances, the plaintiff's mother got the possession of the suit land.

In *M/s Modi Hospital and Research Centre, Medical Science*

v. Shankar Singh Bhandari and others, 1996 (1) RRR 601 (P&H), it was observed that a person in illegal possession is not entitled to injunction. In this case, it was held that the labourers who occupied the land had no relationship with the Hospital either as licensee or lessee and on the completion of the work, they were liable to evict the hut. In the present case also, the plaintiff has not been able to establish his jural relationship.

I find no infirmity in the findings recorded by the Court below.

The appeal is dismissed in limine.

May 16, 2017
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(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No