

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 2264 of 2017 (O&M)
Date of Decision: 27.4.2017

Mal Singh

.....Appellant

Versus

Des Raj and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Manvinder Singh Sidhu, Advocate
for the appellant.

ANITA CHAUDHRY, J

CM-5520-C-2017

Application is allowed for the reasons stated therein.

Delay of 55 days in refiling the appeal is condoned.

CM-5521-C-2017

Application is allowed for the reasons stated therein.

Delay of 11 days in filing the appeal is condoned.

RSA-2264-2017 (O&M)

This is the appeal filed by the plaintiff against the judgment of reversal.

Few facts are necessary. The plaintiffs filed the suit asserting their possession on the property detailed in the judgment measuring 48 kanals falling in the revenue estate of village Khasabad. It was pleaded that the property was owned by the Central Government in 1996-97 and the Central Government was shown to be in possession whereas it was being cultivated by the plaintiffs and defendants No. 3 and 4. Therefore, they approached the Tehsildar who visited the spot and corrected the *khasra*

girdawri in favour of the plaintiffs and defendants No. 3 and 4 but defendants No. 1 and 2, who were influential, tried to dispossess them forcibly and proceedings under Section 107/151 Cr.P.C. were initiated.

Defendant No. 1 took the plea that the suit was not maintainable as they had not impleaded the original owner. It was pleaded that the property had been transferred to Government of Punjab for disposal and the suit was not maintainable under Section 16 of the Package Deal Property (Disposal) Act, 1976. It was pleaded that Gurmail Singh defendant No. 2 was allotted this land in an auction and conveyance deed in respect of 96 kanals was issued in favour of Gurmail Singh and Darshan Ram. It was pleaded that defendant No. 1 was managing the share of Gurmail Singh. It was denied that they had tried to take forcible possession. It was pleaded that they were in possession of the property.

The trial Court noted that the entries in the *khasra girdawri* and *jamabandi* were in favour of the plaintiffs and defendants No. 3 and 4 as *gair marusi* showing their cultivating possession and defendant No. 1 had failed to rebut the entries. Therefore, the plaintiffs were entitled to injunction and could not be dispossessed by the defendants.

Defendant No. 1 preferred an appeal.

The Appellate Court noted that the land had been purchased in an auction from the Government and conveyance deed had been executed in favour of Gurmail Singh who had executed a power of attorney in favour of Des Raj-appellant. It also observed that the land was purchased jointly by Gurmail Singh and Darshan Ram and that auction had taken place in 1966 which was confirmed on 11.11.1966 but the sale certificate was issued in 1999 which was in the name of Gurmail Singh. It noted that in the *khasra*

girdawri for the years 1996 to 1998 the names of Dalip Singh, Mohinder Singh and others were shown to be in possession to the extent of 6/7 share but it did not reflect that by which order the correction had been made. It noted that in the previous jamabandi for the year 1995-96, the Central Government was shown to be the owner and in possession and the entries had been got changed without any basis and could not be relied upon. It was held that the lower Court had wrongly held the plaintiffs to be in possession of the property and they had no right in the property.

The copy of the jamabandi for the year 2010-11 was placed on record during the course of hearing. I find that the Central Government is still reflected to be the owner and the possession of the plaintiffs is shown as *Najayaz*. The plaintiffs were entitled to injunction only if they could show that they had entered the property legally. They have no lease agreement in their favour. It appears that the plaintiffs got the entries changed illegally with the help of revenue authorities. The auction of the property had taken place in 1966. It appears that some dispute arose and the amount was not deposited on time and separate proceedings were going on as was revealed during the course of arguments. The question would remain as to whether the plaintiff is entitled to retain his possession (if any) and whether the discretionary relief of injunction could be granted against the plaintiff who was a rank trespasser and was not entitled to hold on to possession. The plaintiff intentionally did not implead the Central Government as a party who is recorded as owner and had concealed facts. The defendants had produced a number of documents to show that the auction had taken place in 1966 and the conveyance deed was issued in favour of Darshan Ram and Gurmail Singh.

In ***Mahadeo Savlaram Shelke versus The Pune Municipal Corporation, 1995(2) Civil Court Cases 258***, the Apex Court had held that a person in unlawful possession has no right to claim injunction against the true owner. This position has been reaffirmed in ***Premji Ratansey Shah versus Union of India 1995(3) Recent Revenue Reports 11 (Supreme Court of India)***.

In ***Osmania University versus Dr. Rajeshwar Rao and others 1990 Civil Courts Cases 21*** a very important statement of law has been made to the following effect:-

“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 clean hands. The plaintiff cannot therefore normally be permitted to seek the aid of the court to protect his unlawful possession for seeking injunction against the true owner.”

In ***M/s G.M. Modi Hospital and Research Centre, Medical Science v. Shankar Singh Bhandari and others 1996(1) Civil Court Cases 325***, it was clearly stipulated that a person in illegal possession is not entitled to injunction.

In the light of this, the plaintiff was not entitled to any injunction. I find no infirmity in the findings recorded by the Appellate Court. The findings recorded by the Appellate Court are affirmed.

The appeal is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

April 27, 2017

Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes