

**In the High Court of Punjab and Haryana at Chandigarh**

**Regular Second Appeal No. 2292 of 2017 (O&M)**

**Date of Decision: 28.4.2017**

Mukhtiar Singh and another

.....Appellants

Versus

Bua Ditta and others

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

Present: Mr. Sanjeev Pandit, Advocate  
for the appellants.

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**ANITA CHAUDHRY, J**

**CM-5590-C-2017**

Application is allowed as stated therein.

Delay of 100 days in filing the appeal is condoned.

**RSA-2292-2017 (O&M)**

This is the plaintiffs' second appeal assailing the dismissal of the suit and the appeal.

The plaintiffs approached the Court seeking permanent injunction restraining the defendants from forcibly dispossessing them. It was claimed that the plaintiffs' mother Jatinder Kaur was in possession of this property and after the death of Jatinder Kaur, the plaintiffs came in possession without any hindrance. Prior to Jatinder Kaur, her mother Rattan Devi was in possession. The plaintiffs had pleaded that the defendants were asserting that they had purchased the land and got the partition effected and this land had fallen to their share but they had no right to dispossess them forcibly or take the law in their hands.

The defendants' plea was that the plaintiffs had concealed

and the plaintiffs were neither the owners nor in possession and had no cause of action.

The lower Court observed that the witness of the plaintiff namely Madan Lal had admitted that the defendants were in possession of the disputed number. It was held that in the jamabandi Jatinder Kaur, mother of the plaintiffs, was shown to be in possession though she had died a number of years ago and the entries were existing in favour of a dead person. It was held that the plaintiffs had been unable to show how they came in possession of the property. The suit was dismissed.

The appeal filed by the plaintiffs was also dismissed.

I have heard the counsel for the appellants at great length.

It was urged that the plaintiffs and their predecessors were in possession of the property for a number of years and though the defendants had claimed that they had purchased the property but the possession was never taken from them and they were entitled to retain their possession and could be dispossessed only in due course of law.

The plaintiffs had asserted their possession as *gair marusi*. They are not the owners. There is no plea that they were tenants or licencees. They have not explained whether they had legally entered the property. When a person has no interest or right in the property or where the possession is not lawful, he is not entitled to any injunction. In ***Harniv Sandhu versus Sandeep Singh Sandhu 1998(3) Civil Court Cases 676***, it was clearly held that where a party seeking possession fails to produce any legal documents or show valid reasons as to on what basis he took over the possession, then he is not entitled to discretionary relief of injunction because the Courts do not protect the possession of a trespasser against the

true owners.

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 present case, the plaintiffs had been unable to show how they had entered into possession if at all they were in possession. It is not their case that they were inducted as tenants or licensees. The plaintiffs' own witness admitted that the defendants were in possession. The defendants had purchased the property and had applied for partition. The property was partitioned and mutation was effected. It appears that the wrong entries are

continuing. The plaintiffs were seeking injunction which is a equitable

relief and a person who has no right or cause in the property cannot be permitted to protect his unlawful possession (if any). There is no evidence to show that the plaintiffs had paid any rent to anybody. On the contrary, the defendants are the rightful owners. The finding recorded by both the Courts below cannot be faulted with and is affirmed.

The appeal is dismissed in limine.

**(ANITA CHAUDHRY)**  
**JUDGE**

**April 28, 2017**  
Gurpreet

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| <b>Whether speaking/reasoned</b> | <b>:</b> | <b>Yes</b> |
| <b>Whether reportable</b>        | <b>:</b> | <b>Yes</b> |