

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No.268/2015**

% **Reserved on: 15th September, 2017**
Pronounced on: 19th September, 2017

HANUWANT SINGH SINCE DECEASED NOW REPRESENTED
THROUGH LRs

..... Appellant

Through: Mr. V.K.Garg, Sr. Adv. with
Mr. Sudhanshu Tomar and Ms.
Noopur Dubey, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ruchir Mishra, Adv. for R-
1.
Mr. Saurabh Chadda and Mr.
Ishan Kashyap, Advs. for R-2
to 4.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. This Regular Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) by the plaintiff in the suit impugning the judgment of the first appellate court dated 4.4.2014. The first appellate court as per the judgment dated 4.4.2014 accepted the appeal of the defendants in the suit, respondents herein, and set

aside the judgment of the trial court dated 14.9.2012. Trial court by its judgment dated 14.9.2012 had decreed the suit of the appellant/plaintiff and granted a decree of permanent injunction against the respondents/defendants restraining the respondents/defendants from interfering with the peaceful possession of the appellant/plaintiff over the suit property built upon land of Khasra No. 106 measuring 13 biswas as also land beyond Khasra No. 106 measuring 9 biswas, existing between Khasra Nos. 106 and 105 of Village Rangpuri, Vasant Vihar, New Delhi. I note that the dispute really is of 9 biswas (450 sq. yards) of land beyond Khasra No. 106 owned by the appellant/plaintiff.

2. The facts of the case are that the appellant/plaintiff filed the suit pleading that he was the owner of 13 biswas of land situated in Khasra No.106 of Village Rangpuri, Vasant Vihar, New Delhi. It was pleaded that the appellant/plaintiff besides being the owner in possession of 13 biswas of land situated in Khasra No. 106, was also in possession of land beyond Khasra No.106, but not forming part of Khasra No.105 i.e between Khasra Nos.106 and 105, being an area of 9 biswas. Appellant/plaintiff claimed to be in possession of the total

land since around 40 years and hence sought decree of the suit for injunction by praying the following relief:-

“It is, therefore, respectfully prayed that a decree of Permanent Injunction may kindly be passed in favour of the plaintiff and against the defendants, its staff and officials, thereby restraining them from illegally interfering in the peaceful possession of the plaintiff of the property built upon the land of Kh.No.106 (measuring 13 biswas) and over excess land (measuring 9 Biswas) between Khasra No.106 and khasra No.105, situated in village Rangpuri, Vasant Vihar, New Delhi, as shown in red lines in the site plan annexed herewith the plaint. The defendants be also restrained from demolishing any portion/portions of the suit premises as well as from illegally dispossessing the plaintiff from the premises in dispute.”

3. The suit was contested by the respondents/defendants and it was pleaded that the appellant/plaintiff was not the owner of the land situated between Khasra No. 106 and 105. Respondents/defendants also denied that appellant/plaintiff was in settled possession of the suit land for over 40 years.

4. After pleadings were complete, the trial court framed the following issues:-

ISSUES:-

- “1. Whether the plaintiff can sustain its possession over excess land lying between Khasra No.105 and 106 in village Rangpuri, Vasant Vihar, New Delhi? OPP
2. Whether the suit is not maintainable? OPD
3. Relief.”

5. With respect to the main issue no.1, trial court held that the appellant/plaintiff did not have to prove ownership of 9 biswas

situated between Khasra nos. 106 and 105 because it was not the case of the respondents/defendants in their written statement that they were owners of this disputed land of 9 biswas situated between Khasra nos. 106 and 105. Trial court held that court cannot presume ownership of land between Khasra nos. 106 and 105 measuring 9 biswas to be owned by the respondents/defendants. Trial court held that unless there are pleadings and evidence of the respondents/defendants that the appellant/plaintiff is interfering with the subject land owned by the respondents/defendants, the respondents/defendants had no right to interfere with the peaceful possession of the appellant/plaintiff of the suit land. Trial court held that the court is not to decide the title of the land in a suit for injunction and once the appellant/plaintiff is found to be in possession, and hence the appellant/plaintiff will be entitled to the relief of injunction of being dispossessed from the suit land. Accordingly, the trial court decreed the suit for injunction filed by the appellant/plaintiff.

6. The first appellate court as per its impugned judgment dated 4.4.2014 held that the trial court erred in requiring the respondents/defendants to prove ownership of the suit land inasmuch

as it was upon the appellant/plaintiff to prove ownership of the disputed land of 9 biswas situated between Khasra nos. 106 and 105 because as per Article 296 of the Constitution of India and the Law of Escheat of land which belongs to no one belongs to the State. Accordingly, the first appellate court held that the suit had to be dismissed because the respondent no.1/defendant no.1/Union of India has to be taken as owner of the suit land. The first appellate court also held that merely because a person is in possession of a land for a long time would not mean that the same would amount to settled possession. Hence the first appellate court allowed the appeal filed by the respondents/defendants and dismissed the suit of the appellant/plaintiff which was decreed in terms of the judgment dated 14.9.2012 of the trial court.

7. Learned senior counsel for the appellant/plaintiff did not have any answer to the application of Article 296 of the Constitution of India which was done by the first appellate court, and consequently, once Article 296 applies, it is the respondent no.1/Union of India who has to be taken as owner of the suit land. Admittedly, the appellant/plaintiff did not plead his ownership of the suit land, and

therefore, the first appellate court has rightly decided that ownership of the suit land being of 9 biswas of land situated between Khasra no.106 owned by the appellant/plaintiff and the other Khasra no.105 has to be held to be owned by the respondent no.1/defendant no.1/Union of India.

8. Learned senior counsel for the appellant/plaintiff sought to place reliance upon an argument that the suit land is covered by the Delhi Land Reforms Act, 1954 and once the suit land is governed by the Delhi Land Reforms Act, it is argued that the land in question will not belong to the Union of India. Learned senior counsel for the appellant/plaintiff sought to place reliance upon certain provisions of the Delhi Land Reforms Act in support of his argument. This Court has however not permitted the learned senior counsel for the appellant/plaintiff to argue the issue that the suit land falls under Delhi Land Reforms Act and hence not covered by the provision of Article 296 of the Constitution of India, inasmuch as this argument and plea is a factual plea. A factual plea has to be taken up in a pleading for the same to be responded to by the other side. Once a factual plea is responded to/disputed, then evidence has to be led on the same and

only when such evidence discharges the onus of proof, can a court give any relief on a factual plea. Whether or not the suit land is governed by the Delhi Land Reforms Act is a factual plea inasmuch as once land is urbanized either by issuing of a notification under Section 507 of the Delhi Municipal Corporation Act, 1957 or under the urbanization notification of Section 11 of the Delhi Development Act, 1957 the land which would otherwise fall under the Delhi Reforms Act would cease to be governed by the Delhi Land Reforms Act vide Section 3(13) of the Delhi Land Reforms Act. If the appellant/plaintiff had taken a factual pleading of the land being governed by the Delhi Land Reforms Act, then the respondents/defendants could have disputed the appellant/plaintiff's stand and led evidence of land in question being urbanized by relevant notifications for the Delhi Land Reforms Act not to apply. Once this factual plea was not taken up by the appellant/plaintiff either in the plaint or in replication, no such issue got framed and hence not decided by the courts below, now in second appeal under Section 100 CPC for the first time this Court cannot allow a factual plea to be raised.

9.(i) Learned senior counsel for the appellant/plaintiff finally argued that since the appellant/plaintiff was admittedly found to be in possession of the suit land in terms of the demarcation report dated 30.5.1997 done pursuant to the orders passed by the trial court, hence the appellant/plaintiff is entitled to injunction against the dispossession.

(ii) This argument of the appellant/plaintiff is misconceived for various reasons. Firstly the demarcation report of possession is dated 30.5.1997 and which is only after the filing of the suit on 15.5.1997 whereas the case of the appellant/plaintiff was of possession of disputed land for around 40 years and there is no documentary evidence of 40 years possession of 9 biswas of land between Khasra nos. 106 and 105 which is proved by the appellant/plaintiff. This aspect is also further discussed at a later stage of this judgment. Secondly, mere possession does not entitle a person to grant of an injunction against dispossession. Appellant/plaintiff admittedly does not claim possession on account of ownership of the appellant/plaintiff of the suit land of 9 biswas and therefore, possession cannot be claimed to be retained on the ground of ownership. The possession is

also not claimed to be an adverse possession maturing into an ownership on account of 30 years adverse possession of the government land, and therefore, once again appellant/plaintiff cannot claim to remain in possession on the ground of being in adverse possession and which has never been the case of the appellant/plaintiff. The only way in which possession can be protected is that the possession must be settled possession. What is the settled possession has been expounded by a Division Bench of three Judges of the Supreme Court in the case of ***Rame Gowda (Dead) by Lrs. vs. M. Varadappa Naidu (Dead) by Lrs. and Another (2004) 1 SCC 769*** and in which judgment Supreme Court has made it clear that possession cannot be settled possession unless possession is with the acquiescence of a true owner. The relevant para of the judgment in ***Rame Gowda's case (supra)*** is para 9 and which reads as under:-

“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 v. Delhi Administration*, *Puran Singh v. The State of Punjab* and *Ram Rattan v. State of U.P.* The authorities need not be multiplied. In *Munshi Ram's case*, 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's case* 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". (emphasis added)

10. A reference to the aforesaid para 9 in *Rame Gowda's* case (*supra*) shows that settled possession does not carry any special charm or magic and that trespasser must be in actual physical possession of the property over a sufficiently long period and which is

a fact to be decided as per the facts and circumstances of each case. Supreme Court has also in ***Rame Gowda's*** case (*supra*) case in para 9 made it clear that it is necessary that the possession of the trespasser must be in acquiescence to by the true owner.

11. In the present case, though the appellant/plaintiff has claimed to be in possession of 9 biswas of the land falling between Khasra nos. 106 and 105, but no documentary evidence has been led to show possession of the appellant/plaintiff for 40 years as pleaded of the 9 biswas of land. The evidence which is filed and proved by the appellant/plaintiff consists of the affidavit by way evidence of the appellant/plaintiff of a demarcation report dated 21.6.1999. The subject suit was filed on 15.5.1997 and therefore, the demarcation report proved and exhibited as Ex.PW1/2 is subsequent to the filing of the suit and thus shows possession only after filing of the suit. No benefit therefore can be taken by the appellant/plaintiff of the demarcation report dated 21.6.1999 Ex.PW1/2. The rest of the documents relied upon by the appellant/plaintiff are copies of ration card or electricity bills or water bills, and which documents very peculiarly have not been proved by the appellant/plaintiff inasmuch as

whereas the demarcation report dated 21.6.1999 was exhibited as Ex.PW1/2, the documents being the ration card, electricity bill have only been marked. In any case, these documents even if referred to do not show that the appellant/plaintiff is in settled possession of land of 9 biswas situated between Khasra nos. 106 and 105. Appellant/plaintiff therefore has failed to prove his settled possession of the suit land. Appellant/plaintiff therefore cannot be granted the relief of injunction on the ground that appellant/plaintiff is in possession of the suit land.

12.(i) In fact, the Supreme Court has in various judgments held that the discretionary and equitable relief of injunction should not be granted to a trespasser with respect to public land. The two judgments of the Supreme Court are:-

(A) *Premji Ratansey Shah and Others Vs. Union of India and Others (1994) 5 SCC 547;*

(B) *Mahadeo Savlaram Shelke and Others Vs. Pune Municipal Corporation and Another (1995) 3 SCC 33;*

(ii) The relevant paras of the judgment in the case of *Premji Ratansey Shah (supra)* read as under:-

“4. It is seen that in a suit as originally framed, they sought for a declaration that the award made in respect of the land was void, inoperative

and does not bind the petitioners. But that relief had been given up. Thereby, the title of the land of the railways have not been questioned. With award made under Section 30, the vendors of the petitioners got themselves bound by the above award under Section 12 of the Act. It is also seen that the two awards had become final and possession was delivered to the railways by the Land Acquisition Officer on 24.2.1960. Thus defendants 3 and 4 had no ghost of right, title or interest in the lands acquired from the original owner Maibai. The said sale is a void sale and the petitioners, therefore, cannot derive any interest under the agreement of sale to resist the possession of the lawful owner nor could the declaration sought for be given. The question, therefore, is whether an injunction can be issued against the true owner. Issuance of an order of injunction is absolutely a discretionary and equitable relief. In a given set of facts, injunction may be given to protect the possession of the owner or person in lawful possession. It is not mandatory that for mere asking such relief should be given. Injunction is a personal right under section 41 (j) of the Specific Relief Act, 1963, the plaintiff must have personal interest in the matter. The interest of right not shown to be in existence, cannot be protected by injunction.

5. It is equally settled law that injunction would not be issued against the true owner. Therefore, the Courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in the favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner.”

(iii) The relevant para of the judgment in the case of

Mahadeo Savlaram Shelke (supra) reads as under:-

“9. It is settled law that no injunction could be granted against the true owner at the instance of persons in unlawful possession. It is true that the appellants placed reliance in their plaint on the resolutions passed by the Municipality on 11.11.1972 and 29.11.1972. A reading of those resolutions would prima facie show that possession would be taken where the acquisition proceedings have become final and land acquisition proceedings would not be pursued where award has not been made as on the date of the resolutions. In this case, since the acquisition proceedings have become final then necessarily possession has to be taken by the Corporation for the public purpose for which the acquisition was made. In that context the question arises whether the appellants can seek reliance on two resolutions. They furnish no prima facie right or title to the appellants to have perpetual injunction restraining the Corporation from taking

possession of the building. The orders of eviction were passed by due process of law and had become final. Thereafter no right was created in favour of the appellants to remain in possession. Their possession is unlawful and that therefore, they cannot seek any injunction against the rightful owner for evicting them. There is, thus neither balance of convenience nor irreparable injury would be cause to the appellants.”

13. In view of the above discussion, it is seen that the appellant/plaintiff is neither the owner of the suit land, nor is in settled possession of the suit land. The first appellate court has rightly held that in view of Article 296 of the Constitution of India, it could be the respondent no.1/Union of India who would be the owner of the suit land. Once the appellant/plaintiff is neither owner and nor is in settled possession of the suit land, the appellant/plaintiff has rightly been denied the relief of injunction by the first appellate court by dismissing his suit.

14. No substantial questions of law arises. Dismissed.

SEPTEMBER 19, 2017/ib

VALMIKI J. MEHTA, J