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

**Civil Revision No.4447 of 2018
Date of Decision: 17.07.2018**

Parminder Kaur

.....Petitioner

Vs

Amarjit Kaur

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Abhijeet Partap Singh Chaudhary, Advocate
for the petitioner.

Mr. Nitin Thatai, Advocate
for the caveator/respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 17.07.2017 passed by the Civil Judge (Jr. Divn.) Ludhiana vide which application under Order 39 Rules 1 and 2 read with Section 151 CPC was dismissed by the Courts below.

[2]. Brief facts of the case are that plaintiff filed a suit for permanent injunction restraining the defendant from interfering in peaceful possession of the plaintiff over the suit land/house. Along with the suit, an application under Order 39 Rules 1 and 2 CPC was also filed. Plaintiff asserted that she along with her

family is residing in the suit property measuring 315 sq. yards situated at Street No.12-C, Shaheed Karnail Singh Nagar, Back side Merado Colony, Ludhiana and house property measuring 150 sq. yards situated at Street No.12-D, Shaheed Karnail Singh Nagar, Back side Merado Colony, Ludhiana. The aforesaid properties shown in site plan A and B are connected with each other. It was alleged by the petitioner that defendant is sister-in-law (nanad) of the plaintiff and the plaintiff is in actual physical possession of the suit property without any interference of anyone since the date of her marriage with Tara Chand, who was actual owner of the suit property. Plaintiff placed on record photographs to show that the plaintiff and her family members remained in possession of the same. On the basis of threat perception, the suit for permanent injunction came to be filed.

[3]. As per written statement filed by the defendant, it was asserted that defendant and her husband were the owner of the suit properties measuring 300 sq. yards and 163 sq. yards as per revenue record. Defendant had purchased the suit property vide registered sale deeds dated 11.01.1983 and 29.08.1985 from the previous vendors. The name of defendant and her husband are recorded in the revenue record. In the year 1988, defendant and her husband along with other family members shifted to America. The supervision of the property in question

was handed over to the sister of defendant namely Harbhajan Kaur and thereafter to Bhagwant Kaur and in the year 1997, defendant with the consent of her husband gave supervision of the suit property to her brother Tara Singh and his wife Parminder Kaur (plaintiff). The keys of servant room of the property was given to them in order to supervise and take care of the property which was locked by the defendant. Only the servant room was given to the plaintiff as licensee. Defendant and her husband used to visit and live in the suit property. When the defendant along with her nephew came to India on 23.03.2017, they found that locks of the suit property were broken. FIR was got registered.

[4]. Both the Courts below have dismissed the application for interim injunction under Order 39 Rules 1 and 2 CPC.

[5]. Learned counsel for the petitioner submitted that the plaintiff/petitioner is in long possession of the property in question and her possessory title can be acknowledged on the basis of documents viz. passport and other documents.

[6]. By relying upon **Muddanna and others vs. The Panthanagere Group Panchayat, Kaengeri Hobli, 2003(2) R.C.R. (Civil) 779**, learned counsel further submitted that long standing possession cannot be ignored and the plaintiff cannot

be treated to be a rank trespasser and in these circumstances, petitioner can only be dispossessed in due course of law.

[7]. I have considered the submissions made by learned counsel for the parties.

[8]. In the aforesaid cited case, there was serious dispute regarding title and the plaintiff was not proved to be a rank trespasser. In the instant case, title qua the property is not disputed. The defendant is admittedly owner of the property in question. As per case set up by the defendant only a room was given to the plaintiff as licensee in order to supervise the remaining property. The alleged possessory right of the plaintiff was not *prima facie* demonstrated before the Courts below with reference to any lease deed. The very entry of the plaintiff in the demised premises was not on account of any lawful means or by way of any permissive mechanism.

[9]. It is a settled principle of law that if a person enters the premises on account of any lawful means and subsequently that lawful criteria becomes illegal, then in such eventuality, the person in an unauthorised possession can only be evicted in due course of law, but when the very entry of the person in the demised premises is on account of illegal means i.e. rank trespasser, then such a protection is not available to the

encroacher. Reference can be made to **Premji Ratansey Shah vs. Union of India, 1995(3) R.R.R. 11; Rame Gowda (D) by LRs vs. Mr. Varadappa Naidu (D) by LRs and Anr., 2004(1) R.C.R. (Civil) 519; Subramaniaswamy Temple, Ratnagiri vs. V. Kanna Gounder (dead) by LRs, 2009(3) SCC 306 and Smt. Surinder Kaur vs. Smt. Amarjit Kaur, 2001(3) R.C.R. (Civil) 790.**

[10]. The cumulative effect of the precedents cited hereinabove would show that the true owner cannot be pitted against a rank trespasser in terms of giving any leverage to the trespasser for protecting his or her evil design. Both the Courts below have exercised their jurisdiction in a lawful manner. Case of the plaintiff on being tested on golden principles of *prima facie case*, balance of convenience and irreparable loss in the event of not granting injunction, could not satisfy the said ingredients.

[11]. Resultantly, the impugned orders are not found to be illegal, nor the same are bad on account of any perversity. This revision petition is accordingly dismissed.

July 17, 2018

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Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No