

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

**RSA No.879 of 1992 (O&M)
Date of Decision.19.09.2018**

Gurmukh Singh

.....Appellant

Vs

Harbhajan Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.S. Virk, Advocate
for the appellant.

None for the respondents.

-. -

AMIT RAWAL J. (ORAL)

The appellant-plaintiff is in regular second appeal against the judgment and decree of the lower Appellate Court whereby the suit for permanent injunction restraining the defendants decreed by the trial Court on 21.01.1988 has been dismissed.

The appellant-plaintiff instituted the suit for permanent injunction restraining the defendants from interfering into peaceful possession and enjoyment and from dispossessing the plaintiff from the land measuring 38 kanals 2 marlas comprised in Khewat/Khatauni No.56/62, 57/64 Killa No.64//6(8-0), 7(8-0), 14/2(7-4), 15(8-0), 64//5/1(6-18) situated in the area of village Kannian Kalan, Tehsil Nakodar, District Jalandhar on the premise that his grandfather, who since deceased, was inducted as tenant. The defendants intended to forcibly dispossess the plaintiff, hence the suit.

The defendants contested the suit denying plaintiff's possession. It was averred that after death of Harcharan Singh, they had become owners in possession of the suit land as co-sharers.

The trial Court on the basis of pleadings framed the following issues:-

- “1. Whether the plaintiff is entitled to the injunction prayed for? OPP*
- 2. Whether the suit is bad for non-joinder of parties? OPD*
- 3. Relief.”*

The plaintiff in support of the aforementioned pleadings examined as many as two witnesses and tendered documents Ex.P1 to P7. Ex.P6 is jamabandi for the year 1981-82 and Ex.P7 khasra Girdawari from 1982 to 1986 to establish that he had been in possession of the suit property as *gair marusi* i.e. tenant without rent and also four receipts Ex.P1 to Ex.P4 showing payment of lease money to different heirs of Harcharan Singh @₹1100/- per acre per year.

On the other hand, defendant Harbhajan Singh appeared as DW1 and examined one Pal Singh and tendered document Ex.D1, copy of order passed by A.C Second Grade in partition proceedings.

On the basis of aforementioned evidence, the trial Court decreed the suit granting injunction in favour of the plaintiff that he cannot be dispossessed except in due course of law. The lower Appellate Court in appeal taken by the defendants, reversed the finding of the trial Court by referring to Ex.P1 to P4.

Mr. J.S. Virk, learned counsel appearing on behalf of the appellant submitted that the lower Appellate Court being the last court of fact and law has committed gross illegality and perversity in

not referring to the documentary evidence Ex.P6 and P7 i.e. jamabandi and khasra girdawari *ibid*. In order to claim injunction on the basis of possession, it is the documentary evidence which has to be seen but the entire focus of the lower Appellate Court was on the receipts Ex.P1 to P4, therefore, there is abdication. On perusal of the jamabandi and the khasra girdawari under the column of possession, name of the plaintiff is reflected. It was simpliciter suit for injunction. If at all, the defendants had any grievance, they could have taken recourse to law, thus, urges this Court for setting aside the judgment and decree under challenge.

There is no representation on behalf of the respondents.

The appeal is of the year 1992. This Court while issuing notice of motion on 14.05.1992, granted interim injunction as prayed for by passing the following order:-

“Contends that the plaintiffs are in possession of land in dispute and it is recorded in jamabandi for the year 1981-82 Ex.P6 and for the year 1982-86 Ex.P-7.

Notice of motion for 10.7.1992. Dasti also.

Interim injunction prayed for is granted till further orders.”

On August 18, 1992, while admitting the appeal ordered that status quo shall be maintained.

I have heard learned counsel for the appellant and appraised the paper book. The short point involved in the aforementioned case, as noticed in the notice of motion order, is that the lower Appellate Court being the last court of fact and law failed to

advert to Ex.P6 jamabandi for the year 1981-82 and Ex.P7 khasra girdawari from 1982-86. All these documents lead to irresistible conclusion that the plaintiff had been in possession of the suit land. It is settled law that a person, who is in long and settled possession, cannot be dispossessed except in due course of law. This view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme Court in **Rame Gowda (D) by LRs Vs. M. Varadappa Naidu (D) by LRs (2004) 1 SCC 769**. The defendants failed to place on record any document establishing their possession on the premise that their status is of co-sharers being legal heirs of Harcharan Singh. A plaintiff, who is in long and settled possession, cannot be dispossessed except in due course of law. This is what is the import of the judgment. For the sake of brevity, para 8 of the aforementioned judgment is reproduced herein below:-

“8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of

limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.”

In my view, injunction granted to the appellant-plaintiff is most innocuous as the respondents-defendants have been given liberty to seek possession in accordance with law.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct

law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled.” [at paras 27 - 29]”

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law

continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

As an upshot of my finding, the judgment and decree of the lower Appellate Court suffers from illegality and perversity and the same is hereby set aside. The judgment and decree of the trial Court is restored. The appellant-plaintiff cannot be dispossessed except in due course of law. However, this will not prevent respondents-defendants to seek possession of the suit land from the plaintiff in accordance with law.

(AMIT RAWAL)
JUDGE

September 19, 2018
Pankaj*

Whether Speaking/Reasoned	Yes
Whether Reportable	No