

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

RSA No.1340 of 2011

Date of Decision.25.04.2018

Sita Ram

.....Appellant

Vs

Bansi Lal and others

.....Respondents

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Vipin Mahajan, Advocate  
for the appellant.

Mr. G.S. Sidhu, Advocate  
for respondent No.1, 3 to 6, 8 to 11.

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**AMIT RAWAL J.(ORAL)**

The appellant-defendant is aggrieved of the judgment and decree dated 12.08.2010 rendered by the lower Appellate Court whereby the appeal preferred by the respondents-plaintiffs against the dismissal of the suit for injunction vide judgment and decree dated 20.08.2007 has been allowed.

It would be in the fitness of things to refer few facts emanated from the pleadings of the parties to the *lis*. The respondent-plaintiff instituted the suit for permanent injunction restraining the appellant-defendant, his agents, assignees, representatives and subordinates from interfering in any manner or raising any sort of construction or dispossessing the plaintiff forcibly in respect of land measuring 5 marlas bearing Khewat No.533, Khatauni No.1028, Khasra No.1386/660 min (0-5) situated in village Anand Pur, Hadbast No.33, Tehsil Pathankot as per jamabandi for the year 1995 on the premise that possession of the plaintiff over the aforementioned suit land had been for the last 50 years. The

defendant had been threatening to forcibly dispossess the plaintiff and despite repeated requests, he was adhered to, thus, cause of action arose to file the suit.

The defendant appeared in the court and filed the written statement taking preliminary objections qua suit being bad for non-joinder of necessary parties. It was stated that the entire land was developed as an *abadi deh*. The possession of the plaintiff was denied as *gair dakhilkar* and therefore, was required to be ejected. Till 1971, one Tarsem Lal Bawa had been in possession of the land measuring 14 marlas bearing khasra No.1386/660 min 1387/660 min with specific boundaries, who transferred all his rights to Mr. Baldev Singh son of Mohan Singh vide agreement dated 17.04.1971. Subsequently Baldev Singh transferred his rights in favour of the defendant vide agreement dated 29.10.1982.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- 2. Whether the suit of the plaintiff is bad for non joinder of the necessary parties? OPD*
- 3. Whether the plaintiff has concealed the material facts from the Court? OPD*
- 4. Relief.”*

In support of the averments made in the plaint, the plaintiff examined PW-1, Parkash Singh, PW-2 Raghunath Sharma and tendered into evidence judgment dated 13.02.1992 as Ex.P1, copy of judgment dated 27.11.1979 as Ex.P2, copy of judgment dated 3.6.1987 as Ex.P3, copy of judgment dated 30.4.1990 as Ex.P4, copy of decree sheet dated 30.4.1990 as

Ex.P5, Khasra girdawari as Ex.P6 and jamabandi for the year 1994-95 as Ex.P7. On the other hand, defendant examined Laj Pat as DW1, Ved Raj Sharma as DW2 and defendant himself stepped into witness box as DW3.

The trial Court on the preponderance of aforementioned evidence dismissed the suit but the lower Appellate Court reversed the finding by relying upon the revenue record to establish that it was the Prithvi Ram, who had been in possession of the suit property.

Mr. Vipin Mahajan, learned counsel appearing on behalf of the appellant-defendant submitted that the lower Appellate Court has committed illegality and perversity while reversing the judgment and decree of the trial Court by ignoring Ex.D2 i.e. judgment dated 17.01.2007 rendered in Civil Appeal No.249 of 13.06.2001 titled as “Town Improvement Trust, Pathankot Vs. Prithvi Ram” passed by the Additional District Judge (Ad hoc)-cum-Presiding Officer, Fast Track Court, Gurdaspur wherein it has been held that land in dispute was in ownership of Improvement Trust. In the aforementioned judgment, it was held that possession of respondent-plaintiff was unauthorized and injunction was declined on the premise that no injunction could be granted against the true owner. In the absence of Improvement Trust as party, the injunction granted by the lower Appellate Court is not in consonance with the settled law and therefore, liable to be set aside as the suit was bad for non-joinder of the proper party. The plaintiff did not appear but Parkash Singh appeared as PW1. He admitted that the land belongs to Improvement Trust, Pathankot, therefore, the trial Court rightly held that at the time of filing of the suit, the plaintiff was not in possession, which was clear from the khasra girdawari, Ex.P6. The lower Appellate Court had wrongly taken the evidence beyond pleadings which

could not be looked into but the khasra girdawari Ex.P6 was not adverted to, thus, urges this Court for setting the finding rendered by the lower Appellate Court.

Mr. Sidhu, learned counsel appearing on behalf of the respondent-plaintiff submitted that the judgment and decree of the lower Appellate Court being the last court of fact and law is perfectly legal and justified and there is no illegality and perversity as it had adverted to all the documentary and oral evidence in reversing the finding of the trial Court. Ex.D2 established the possession of the plaintiff and no person who is found in long and settled possession can be dispossessed except in due course of law, thus, injunction was rightly granted. In support of his contention, he relied upon the judgment of Hon'ble Supreme Court in **Rame Gowda (D) by LRs Vs. M. Varadappa Naidu (D) by LRs (2004) 1 SCC 769**, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Vipin Mahajan, for, the khasra girdawari Ex.P6 has been correctly interpreted by the lower Appellate Court but the trial Court abdicated in not noticing the fact that in the column of ownership Improvement Trust has been shown, though it has been shown to be a manager. For the purpose of adjudication of the *lis* in suit for injunction, a person is required to prove long and settled possession, even if he is not the owner. The aforementioned view of mine is derived from para 8 of the ratio decidendi culled out by Hon'ble Supreme Court in the judgment (*supra*), which is extracted as under:-

*“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.”*

The present case of the respondent-plaintiff falls under the

aforementioned parameters as the possession as surfaced in Ex.D2 and Ex.P6 khasra girdawari noticed to be of the plaintiff.

It is appreciable that the lower Appellate Court has exercised the jurisdiction under Section 41 Rule 31 CPC by examining the documentary evidence threadbare being last court of fact and law. Even argument of Mr. Mahajan has not been able to establish the ownership of appellant-defendant, for, Ex.D2 proved that ownership of khasra in dispute was of Town Improvement Trust.

All these factors weighed in the mind of lower Appellate Court while reversing the finding of the trial Court. The argument of Mr. Mahajan has not been able to make out a case to enable this Court to arrive at a finding then the one rendered by the lower Appellate Court. Therefore, the judgment and decree under challenge is upheld and the appeal is dismissed. However, this judgment of mine shall not prevent the true owner to take possession of the land in accordance with law.

**(AMIT RAWAL)**  
**JUDGE**

**April 25, 2018**  
Pankaj\*

Whether reasoned/speaking      Yes

Whether reportable      No