

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

R.S.A.No.97 of 2011 (O&M)

Date of Decision: April 05, 2018

Phool Chand

...Appellant

Versus

Dharam Pal & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

**Present: Mr.Sanjay Verma, Advocate,
for the appellant.**

**Mr.Apporv Sangwan, Advocate for
Mr.S.S.Dinarpur, Advocate,
for respondent No.1.**

AMIT RAWAL, J. (Oral)

Appellant-plaintiff is in Regular Second Appeal against the concurrent findings of fact, whereby the suit seeking injunction against the defendants, i.e., Dharam Pal and Gram Panchayat, from interfering in actual physical peaceful cultivating possession except in due course of law, has been dismissed by the trial Court and in appeal upheld by the Lower Appellate Court.

The suit was based on the premise that the land fully detailed and described in the head note of the plaint was a shamlat deh of the proprietors of the Village. Jindu son of Faggu, father of the plaintiff, was cultivating the suit land as a tenant under the proprietors of the Village, who had been taking the land on batai. In the year 2000, father of the plaintiff died and tenancy rights were inherited by the plaintiff, his brother and mother as tenants. As per the Haryana Government Notification, the

proprietors of the Village had already challenged the mutation in the name of the Gram Panchayat. Since there was a threat perception of forcible dispossession at the hands of the defendants, the suit aforementioned was filed.

Defendant No.1 appeared and filed written statement taking the preliminary objection with regard to maintainability of the suit under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short "1961 Act"). On merits, it was stated that the suit land was ownership of proprietors and possession of father of plaintiff Jindu and the plaintiff was also denied.

Gram Panchayat-defendant No.2 also filed separate written statement took preliminary objection that as per the provisions of Section 2 (g) of 1961 Act, the shamlat land vested in the Gram Panchayat. The land had been leased out by the Gram Panchayat from year to year to the highest bidder in open auction and the entries in the Khasra Girdawari in the name of different persons of the village or in the name of plaintiff's father were incorrect.

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

- "1. Whether the plaintiff is in possession of the suit property on batai if so, then whether the defendants can be restrained from dispossessing the plaintiff as prayed for? OPP*
- 2. Whether the suit is maintainable in the present form? OPP*
- 3. Whether the suit land has been leased out to defendant No.1 for the years 2001-2002, if so its effect? OPD*
- 4. Whether the suit is liable to be dismissed being false and frivolous? OPD*
- 5. Relief."*

Appellant-plaintiff brought on record jamabandi for the year 1995-96 Ex.P1, khasra girdawari for the period 1996 to 2001 Ex.P2, khasra girdawari from 10.10.2001 to 31.3.2006 Ex.P3 and jamabandi for the year 2000-2001 Ex.P4 to show that under column No.5, i.e., name of the cultivator, his father was lessee, yet ignored the aforementioned evidence and dismissed the suit. The appeal laid before the Lower Appellate Court also met with the same fate.

Mr.Sanjay Verma, learned counsel for the appellant-plaintiff submitted that the plaintiff has been able to prove on record the long and established possession through the aforementioned documents, but the same have been ignored on the premise that it is not a long and settled possession, which is not correct appreciation of law in view of the law laid down by the Hon'ble Supreme Court in **Rame Gowda (D) by L.Rs Versus M.Varabappa Naidu (D) by L.Rs & another, 2004 (1) SCC 769**. The judgments and decrees, thus, are required to be set-aside on this short ground alone. He has no objection in case the Gram Panchayat initiate action in accordance with law, but long and settled possession cannot be taken away forcibly and illegally.

On the other hand, Mr.Apporv Sangwan, Advocate for Mr.S.S.Dinarpur, Advocate, appearing on behalf of respondent No.1 submitted that the findings of the Courts below are based upon the appreciation of the evidence. Jamabandies Ex.P1 and Ex.P4 had already been discarded as column No.9 thereof is vacant. In these circumstances, the possession of Jindu was of a trespasser and rightly so, injunction has been declined and, thus, prayed for upholding the concurrent findings.

I have heard the learned counsel for the parties, appraised the

paper book and of the view that there is force and merit in the submissions of Mr.Verma, for, the findings of both the Courts below after noticing the contents of the jamabandies branding the appellant or his father to be a trespasser is not correct appreciation of law. A person, who is not even a tenant but has been found and proved to be in long and settled possession, cannot be dispossessed forcibly and illegally except in due course of law. This view of mine is supported by the ratio decidendi culled out by the Hon'ble Supreme Court in the judgment cited supra. For the sake of brevity, paragraphs 8 and 12 are extracted 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 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.

12. The learned counsel for the appellant relied on the Division Bench decision in Sri Dasnam Naga Sanyasi and Anr. Vs. Allahabad Development Authority, Allahabad and Anr. AIR 1995 Allahabad 418 and a Single Judge decision in Kallappa Rama Londa Vs. Shivappa Nagappa Aparaj and Ors. AIR 1995 Karnataka 238 to submit that in the absence of declaration of title having been sought for, the suit filed by the plaintiff-respondent was not maintainable, and should have been dismissed solely on this ground. We cannot agree. Sri Dasnam Naga Sanyasi and Anr.'s case relates to the stage of grant of temporary injunction wherein, in the facts and circumstances of that case, the Division Bench of the High Court upheld the decision of the court below declining the discretionary relief of ad-interim injunction to the plaintiff on the ground that failure to claim declaration of title in the facts of that case spoke against the conduct of the plaintiff and was considered to be 'unusual'. In Kallappa Rama Londa's case, the learned Single Judge has upheld the maintainability of a suit merely seeking injunction, without declaration of title, and on dealing with several decided cases the learned Judge has agreed with the proposition that where the suit for declaration of title and injunction is filed and the title is not clear, the question of title will have to be kept open without denying the plaintiff's claim for injunction in view of the fact that the plaintiff has been in possession and there is nothing to show that the plaintiff has gained possession by any unfair means just prior to the suit. That is the correct position of law. In Fakirbhai Bhagwandas and Anr. Vs. Maganlal Haribhai and Anr. AIR 1951 Bombay 380 a Division Bench spoke through Bhagwati, J. (as his Lordship then was), and held that it is not necessary for the person claiming injunction to prove his title

to the suit land. It would suffice if he proves that he was in lawful possession of the same and that his possession was invaded or threatened to be invaded by a person who has no title thereof. We respectfully agree with the view so taken. The High Court has kept the question of title open. Each of the two contending parties would be at liberty to plead all relevant facts directed towards establishing their titles, as respectively claimed, and proving the same in duly constituted legal proceedings. By way of abundant caution, we clarify that the impugned judgment shall not be taken to have decided the question of title to the suit property for or against any of the contending parties.”

I am afraid, the findings of the Lower Appellate Court declining injunction by branding the appellant as a trespasser, is not correct appreciation of law. Jamabandi for the year 1995-96 Ex.P1 and 2000-2001 Ex.P4 in column No.5 showed the possession of the father of the plaintiff. The aforementioned documentary evidence itself was sufficient for the Courts below to render the findings in favour of the appellant-plaintiff.

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 aforementioned findings, the judgments and decrees of the Courts below are not sustainable in the eyes of law and hereby set-aside. The suit of the appellant-plaintiff is decreed. The respondent-defendants, their agents, servants or any other person are restrained from dispossessing the appellant-plaintiff from the suit property except in due course of law. Decree-sheet be prepared accordingly.

Appeal stands allowed.

April 05, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No