

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.2754 of 2015 (O&M)
Date of decision:10.05.2018

Sohan Singh

Vs.

... Appellant

Gurmej Singh

... Respondent

RSA No.4012 of 2015 (O&M)

Sohan Singh

Vs.

... Appellant

Raj Singh

... Respondent

RSA No.3761 of 2015 (O&M)

Sohan Singh

Vs.

... Appellant

Khushal Singh

... Respondent

RSA No.2683 of 2015 (O&M)

Sohan Singh

Vs.

... Appellant

Gurbachan Singh

... Respondent

RSA No.2674 of 2015 (O&M)

Sohan Singh

Vs.

... Appellant

Angrej Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr.Raman Goklaney, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of five Regular Second Appeals bearing No.2754, 4012, 3761, 2683 and 2674 of 2015 preferred against the concurrent findings of facts and law, whereby, different suits filed by the respondent-plaintiff seeking simpliciter injunction against forcible dispossession and interference qua different suit properties, had been decreed by the trial Court and affirmed by the Lower Appellate Court.

The respondent-plaintiff instituted the suit seeking injunction against the appellant-defendant from interfering into peaceful and lawful possession on the premise, for, they were put in possession by the Government as per the rapat of 2010 but the defendant wanted to forcibly dispossess him.

The appellant-defendant contested the suit on the ground that in fact, the land belonged to Government. Earlier Teja Singh, father of defendant was owner in possession of the suit property as co-sharer with Boor Singh father of the plaintiff, thereafter, Teja Singh became the owner in possession of the suit property in family settlement. In order to circumvent the revenue proceedings, the respondent-plaintiff instituted the suit which was not permissible.

On the basis of aforementioned pleadings, the trial Court framed as many as seven issues including the issue of Relief. Both the parties extensively led the evidence. Plaintiff examined as many as three

witnesses and brought on record the documentary evidence. On the other hand, defendant examined two witnesses and brought on record Ex.D1 to Ex.D3 and document Mark DA to Mark DC, photocopy of writ petition No.840, Mark DD.

The trial Court on the basis of evidence brought on record found the respondent-plaintiff in long and settled possession and decreed the suit and so was the decision of the Lower Appellate Court.

Mr. Raman Goklaney, learned counsel for the appellant-defendant submits that there is gross illegality and perversity in the judgments and decrees under challenge. No person can be permitted to circumvent the legal process by seeking injunction. In fact, case set out in the plaint was that respondents-plaintiffs were put in possession through warrants of possession, for, in fact, the warrants of possession were issued in favour of the appellant-defendant to take the possession of the property in dispute, thus, injunction granted by the Court below was not permissible in law and thus, urges this Court for setting aside the findings under challenge.

I have heard the learned counsel for the appellant-defendant, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Goklaney, for, the alleged proceedings of the revenue Court had not been placed on record to establish that attempt was made by the respondent to circumvent the same by filing the suit. On the contrary, khasra girdawri for the period Sauni 2008 to Harhi 2009-10 (Ex.P3 and Ex.P4) and jamabandi as noticed by the trial Court in paragraph 17 of the judgment proved the possession of the

respondent-plaintiff. The injunction granted by the Court below is most innocuous. 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 derived from the ratio decidendi culled by the Supreme Court of India in **Rame Gowda (D) by LRs vs. Mr. Varadappa Naidu (D) by LRs and another 2004(1) SCC 769**. For the sake of brevity, paragraphs 8 and 12 of the said judgment 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 injunctioning 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

