

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5681 of 2015 (O&M)

Date of Decision: April 05, 2018

Raju

...Appellant

Versus

Municipal Committee, Kharkhoda

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: None for the appellant.

Mr.Vinod S.Bhardwaj, Advocate,
for the respondent.

AMIT RAWAL, J.

CM No.13883-C of 2015

For the reasons mentioned in the application, which is supported by an affidavit, delay of 10 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.5681 of 2015

Appellant-plaintiff is in Regular Second Appeal against the concurrent findings, whereby the suit seeking injunction against the respondent-defendant from interfering into the peaceful possession over the suit property comprised in Khewat No.1701 min/1517 min, Khata No.2224, Rect.and Killa No.148//13/1/1 (4-0), measuring 4 kanals, situated within the revenue estate of Village Kharkhoda, Tehsil Kharkhoda, District Sonapat by way of demolishing the construction, i.e., four walls, kurari and diary of the plaintiff, forcibly and illegally, had been dismissed and affirmed by the

Lower Appellate Court.

Appellant-plaintiff instituted the suit claiming the aforementioned relief on the premise that defendant-Municipal Committee was/is the owner of the property, whereas one Ram Chander had been shown to be in cultivating possession of the suit property being lessee, but the entries in the revenue record were not correct. In fact, it was the plaintiff who was/is in actual possession of the suit property for the last more than 15/16 years and an electric connection has been installed, therefore, the defendant has no right to dispossess and demolish the construction except by resorting through legal remedy.

The respondent-defendant in the written statement did not deny the possession of the plaintiff over the suit property, but stated that it was wrong and illegal. It was averred that no injunction against a true owner can be granted. Ram Chander was no longer lessee as land comprised in Rect. and Killa No.148/13 measuring 4 kanals in an open auction in 2008-2009 was leased out to one Sushil Kumar and prayed for dismissal of the suit.

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

- 1) Whether the plaintiff is entitled for a decree for permanent injunction against the defendant qua possession of the suit property detailed in para No.1 of the plaint as claimed? OPP*
- 2) Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 3) Whether the plaintiff has no cause of action to file the present suit against the defendant? OPD*
- 4) Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD*
- 5) Whether the plaintiff has concealed the material facts from the Court? OPD*

6) *Relief.”*

In order to prove his case, plaintiff stepped into the witness box as PW-1 and also examined PW-2 Zile Singh and PW-3 Hoshiyara, who deposed on the same lines as Zile Singh, PW-4 Wazir Singh, proved site plan Ex.P1 and PW-5 Kuldeep Kumar UDC, brought on record the application dated 9.2.1993 with regard to the electric connection No.E-1 987 in the name of plaintiff Raju. Plaintiff also brought on record Ex.P1 site plan and Ex.P2 Aks-sizra. On the other hand, the defendant examined Joginder Singh Clerk, Municipal Committee, Sonapat as DW-1 and closed evidence.

The trial Court, after examining the evidence brought on record, held that injunction against the true owner/defendant could not be granted and rejected the claim and so did the Lower Appellate Court.

The case as set up by the plaintiff was that he had been in long and continuous possession and in view of the law laid down by the Hon'ble Supreme Court in **Rame Gowda (D) By LRs vs M. Varadappa Naidu (D) By Lrs. & Anr, 2004 (1) SCC 769**, ingredients for claiming injunction had been proved, therefore, could not be dispossessed except in due course of law. The electric connection was installed in 1993, whereas the suit was filed in 2009 when there was a threat perception. Nothing prevented the defendant to take the remedy for dispossession or demolition of any encroachment, if any, by resorting to legal remedy.

Per contra, Mr.Vinod S.Bhardwaj, learned counsel appearing on behalf of the respondent-defendant submitted that no doubt injunction against the true owner can be granted in proof of long and settled possession, but the appellant-plaintiff miserably failed to prove the long and

settled possession to bring the case within the principles culled out in the judgment cited supra and, thus, prayed for affirming the concurrent findings as there is no illegality or perversity.

I have heard the learned counsel for the respondent-defendant, appraised the paper book and of the view that there is merit in the aforementioned appeal, for, the electric connection in respect of the premises issued in 1993 has been proved through the testimony of PW-5 Kuldeep Kumar UDC. The defendant, in the written statement, also admitted the possession of the plaintiff. Both the documents, if read in cumulative, leads to an irresistible conclusion that the possession of the appellant-plaintiff had been long and established.

Hon'ble Supreme Court in Paragraphs 8 and 12 of **Rame Gowda's case (supra)**, while reversing the previous findings as to whether injunction can be granted against the true owner or not, held 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 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.”

The present case falls within the parameters as culled out in the aforementioned judgment as the plaintiff had been found to be in legal and settled possession and nothing prevented the defendant-Municipal Committee to take resort by legal means. All these factors have not been taken into consideration by the Courts below and, therefore, there is illegality and perversity.

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 set-aside and the suit is decreed. Respondent-defendant is restrained from demolishing the construction raised by the appellant-plaintiff over the suit property, i.e., four walls, kurari and diary, forcibly and illegally, through agents, servants, except in due course of law. The injunction cannot prevent the defendant to take remedy in accordance with law for taking possession as concededly plaintiff admitted the ownership of the defendant-Municipal Committee.

Appeal stands allowed. Decree-sheet be prepared accordingly.

April 05, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No