

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

(111)

**RSA No.2050 of 2017 (O&M)
Decided on : 07.02.2018**

Bhajan Singh and another

... Appellants

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Ajit Singh Sodhi, Advocate
for the appellants.

G.S. Sandhawalia, J. (Oral)

The present regular second appeal filed by the plaintiffs-appellants is directed against the concurrent findings recorded by the courts below, whereby the suit of the plaintiffs-appellants has been dismissed for permanent injunction for the land measuring 35 kanals 1 marla situated in village Booh Gujran, Sub-Tehsil Makhu, Tehsil Zira, District Ferozepur.

The suit was filed on 08.01.2013 on the strength of sale deeds dated 09.02.2004 Ex.P1 and Ex.P3 executed by the sons of Karam Chand, namely, Bal Krishan, Subhash Chander and Madan Gopal. The case of the plaintiffs-appellants was that the Central Government allotted the land in favour of the said persons and entry had been made in the jamabandi for the year 2000-2001. Possession had been delivered to them by the said vendors. They had sown wheat crop in the suit land and on account of being threatened from being dispossessed from the suit land on 30.12.2012, the suit had been filed.

The defence of the respondents No.1 and 8-State of Punjab

through District Collector, Ferozepur was that the land was of Central Government and earlier allotted with the Canal Department. Reliance was placed upon the notification dated 03.05.1958 (Ex.DW2/B) to show that the land was again transferred in the name of Central Government and the Canal Department had been in possession of the land in suit. A mutation had been sanctioned on 26.12.2012 in favour of the Central Government and the Forest Department had taken actual possession of the land in dispute by growing plants. It was further averred that inadvertently the area was transferred in the name of Bal Krishan, Subhash Chander and Madan Gopal and the conveyance deed had been cancelled and the plaintiffs had no concern with the suit land and Bal Krishan etc. were not entitled to sell the land of the Central Government.

Similarly, the Department of Forest and Wild Life Preservation, Punjab had submitted that Bal Krishan etc. got false and frivolous entries entered in revenue record in connivance with the revenue employees to take illegal benefit. The land was in possession of the Canal Department and earlier there was a canal, but later the same was not in existence. Vide the notification dated 03.05.1958, the property came under the maintenance of Forest Department under Section 29 of the Indian Forest Act, 1927 as a protected forest and Forest Department had planted trees at the spot. The plaintiffs cut some trees which were planted by the Forest Department and took illegal possession which was later on again taken by the Forest Department. They were fined by the Forest Department and ₹47,000/- was recovered from Bhajan

Singh and sons and even a receipt was issued. Plaintiffs had tried to grab the land of Government in connivance with the revenue officials for which they could not succeed and, therefore, the suit had been filed.

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

- “1. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP*
- 2. Whether the plaintiffs have not come to the court with clean hands and suppressed the material facts from the court? OPD*
- 3. Whether the suit is not maintainable in present form? OPD*
- 4. Whether notice under Section 80 CPC is required to be served upon the defendants No.1 to 8 before filing this suit? OPD*
- 5. Relief.”*

The plaintiffs examined as many as 4 witnesses, whereas on the side of the State 3 witnesses were examined.

Keeping in view the evidence on record, it was noticed by the trial Court that the claim was on the basis of the sale deeds, but as per the notification Ex.DW2/B, the land belonged to the Forest Department. Even though it had been allotted to the Bal Krishan, but the same had been transferred to the Canal Department and, therefore, the allotment also stood cancelled. It was noticed that the land was allotted to Bal Krishan and, therefore, once the allotment was illegal to Bal Krishan, the plaintiffs possession was illegal and, therefore, they could not seek any injunction not being the true owner. Resultantly, the suit was dismissed.

An appeal was carried to the District Judge, Ferozepur, which also now stands decided against the appellants on 01.12.2016, wherein the lower Appellate Court came to the conclusion that in view of

the notification, the Punjab Government had given the land in dispute to Forest Department as per provisions of Section 29 of the Indian Forest Act, 1927. Merely because possession had been delivered to Bal Krishan and sale deed had been executed in favour of the plaintiffs, the ownership of the Central Government could not be taken away. There was nothing on record to show that Bal Krishan and others were having a right on the suit land, therefore, he could not pass better title than what he himself had. DW-1, Kuldeep Singh, SDO had deposed that earlier there was a canal known as old Fatewah Canal, which was now not in existence. He further deposed that the notification pertained to the land which came under the maintenance of the Forest Department. The revenue entries had been rectified vide mutation No.1601 and, therefore, it was held that the execution of the sale deeds would not be of any help to them. Merely, because one Rapat No.450 had been entered in favour of the Bal Krishan etc., they would not become owners. The factum of having been fined for cutting the trees was also noticed and, therefore, since the vendees did not have valid titles and effort had been made to deprive the Central Government qua ownership right over the suit land and Forest Department was having control over the suit land, the appeal was, accordingly, dismissed.

Counsel for the appellants has vehemently argued that there were sale deeds in their favour and since the revenue record was in favour of the vendors, the possession should have been protected.

It is to be noticed that the alleged allotment letter in favour

of the vendors has not been placed on record to show on what basis title had passed on to Bal Krishan and family. They could have only been transferred the proper title as such to the appellants-plaintiffs. The courts below have recorded a finding that the land belonged to the Forest Department. As per notification itself, it would be clear that the land on the either side of the canal had been declared Government Forest. The appellants had been fined for cutting and removing the trees on the forest land and they had deposited a sum of ₹47,000/- on 06.01.2010, which is 3 years prior to the date of the institution of the suit. At that point of time they had never challenged the action of the respondents and never got their title clarified or filed a suit for declaration that they were owners in possession and that their vendors had a valid title and had valid possession which could be handed over to them. Neither the persons from whom they had purchased the land were examined as witnesses to show that the allotment in their favour was justified and by which authority and under which authority of law. In such circumstances, the injunction had been rightly declined by both the courts below.

It is settled principle that the courts will not grant any injunction to the person who has taken unlawful possession. Reference can be made to the judgments of the Apex Court in '**Premji Ratansey Shah Vs. Union of India ' 1994 (5) SCC 547**'. The relevant observations read as under:-

“The question, therefore, is whether an injunction can be issued against the true owner. Issuance of an order of injunction is absolutely a discretionary and equitable relief. In

a given set of facts, injunction may be given to protect the possession of the owner or person in lawful possession. It is not mandatory that for mere asking such relief should be given. Injunction is a personal right under Section 41(j) of the Specific Relief Act, 1963; the plaintiff must have personal interest in the matter. The interest of right not shown to be in existence, cannot be protected by injunction.

5. It is equally settled law that injunction would not be issued against the true owner. Therefore, the courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner.”

In such circumstances, the order passed by the courts below does not suffer from any infirmity or illegality which would warrant interference by this Court. Accordingly, there is no merit in the present regular second appeal and same is dismissed in limine.

FEBRUARY 07, 2018

Naveen

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No