

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.540 of 2004****Judgment reserved on :14.12.2018****Judgment delivered on: 07.01.2019**

1. Smt. Seva Kaur, W/o Harbansh Singh, aged 58 years, R/o Arya Colony, Tifra, Bilaspur (CG)
2. (i) Tejpal Singh S/o Haravansh Singh, aged about 56 years, R/o Shiv Takij Chowk, Bilaspur, Teh. District Bilaspur (CG)
(ii) Paramjeet Singh S/o. Harbansh Singh, Aged-51 years,
(iii) Balbeer Singh S/o. Harbansh Singh, Aged-44 years,
All R/o. Shiv Takij Chhowk Bilaspur, Teh. & Distt. Bilaspur (CG)

---- Appellants/Plaintiffs**Versus**

1. Smt. Jogendra Kaur, W/o Daljit Singh, aged 50 years, R/o Shiv Talkies Chowk, Bilaspur (CG)
2. Daljit Singh, S/o Gurubachan Singh, aged 54 years, R/o Shiv Talkies Chowk, Bilaspur (CG)

---- Respondents/Defendants

For Appellants	:	Mr.Rajeev Shrivastava and Mr.Gagan Tiwari, Advocates
For Respondents	:	Mr.Ashish Shrivastava, Mr.Anurag Verma and Mr.Animesh Verma, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

1. The substantial question of law involved, formulated and to be answered in the plaintiffs' second appeal is as under:-

“Whether the Courts below were not justified in dismissing the suit for permanent injunction atleast for the part which was possessed by the plaintiffs ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The suit land/house shown in red ink as per Schedule "B" annexed with plaint is originally belonged to Mr.Gyan Singh and dispute relates to that property. In Civil Suit No.4A/82 (State Bank v. Gyan Singh), the decree of ₹ 40,000/- was passed against him. It is the case of the defendants that defendant No.1 paid the said amount in compliance of the judgment and decree passed in Civil Suit No.4A/82 as Gyan Singh was unable to make payment of said decretal amount to the bank and in lieu of that Gyan Singh promised to execute the sale deed in her favour in respect of suit land situated at Shiv Talkies Road, Bus Stand, Bilaspur, but despite payment of the decreetal amount by defendant No.1, Gyan Singh did not execute the sale deed in favour of defendant No.1 leading to filing of suit for specific performance of contract to execute the decree in her favour, which was registered as Civil Suit No.7A/93. The said civil suit was decreed ex-parte vide Ex.D/12 and in execution of said decree, sale deed (Ex.P/2) was executed by the Court and possession is said to have been delivered to defendant No.1 in accordance with law. Thereafter, the appellants/plaintiffs filed a suit for declaration of title and permanent injunction against the defendants in respect to the suit property bearing khasra Nos.223/1 and 223/2 stating inter-alia that they are title-holder and possession holder of the suit land and defendant No.1 taking benefit of her own

wrong and by producing incorrect map of Gyan Singh got the sale deed executed in her favour, which is owned by plaintiff No.1 and trying to interfere with her peaceful possession, as such, plaintiff No.1 is title-holder of the suit land and as such, the decree for declaration of title and permanent injunction be granted in their favour.

3. The defendants herein filed their written statement denying the plaint allegation stating inter-alia that they are title-holder of the suit land pursuant to the decree of Civil Suit No.7A/93 (Jogender Kaur v. Gyan Singh) and sale deed has been executed in their favour by order of the Court and they have been delivered possession of the suit land in execution of the decree, as such, the plaintiffs are not entitled for any kind of declaration as well as permanent injunction.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 30.4.2004 dismissed the suit holding that the plaintiffs are neither title-holder nor possession holder of the suit land and defendant No.1 is title-holder and possession holder of the suit land pursuant to the decree passed by the Court in Civil Suit No.7A/93.
5. On appeal being preferred by the plaintiffs, the First Appellate Court upheld the judgment and decree passed by the trial Court.
6. Questioning legality and validity of the judgment and decree passed by the First Appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/plaintiffs, in which substantial question of law has been framed by this Court, which

have been set-out in the opening paragraph of this judgment.

7. Mr.Rajeev Shrivastava, learned counsel for the appellants/plaintiffs, would submit that both the Courts below have concurrently erred in not granting the decree for permanent injunction in favour of the plaintiffs as the plaintiffs are admittedly in possession of part of the suit land. He relied upon the judgment of the Supreme Court in the matter of Rame Gowda (dead) by LRS. v. M. Varadappa Naidu (dead) by LRS. And another¹ and the judgment of the Madhya Pradesh High Court in the matter of Gajendra Singh s/o Ramsingh v. Mansingh and others² to buttress his submission.
8. On the other hand, Mr.Ashish Shrivastava, learned counsel for the respondents/defendants, would support the impugned judgment and decree and submit that the dispute only relates to area shown in red mark in Schedule “B” attached with plaint of which the defendants are title-holder and possession holder pursuant to the decree (Ex.D/12), as such, both the Courts below have concurrently and rightly held that defendant No.1 is title-holder and possession holder of the suit land. He would further submit that since defendant No.1 is title-holder and possession holder of the suit land, no decree for permanent injunction can be granted against her and would submit that decision relied upon by learned counsel for the appellants/plaintiffs in Rame Gowda (supra) would not be applicable to the facts of the present case. He relied upon the judgments of the Supreme Court in the matters of Premji Ratansey

1(2004) 1 SCC 769
2 2000(2) M.P.L.J. 316

Shah and others v. Union of India and others³ and Prataprai N. Kothari v. John Braganza⁴.

9. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.

10. The suit property belonged to one Mr.Gyan Singh against whom the decree for recovery of loan amount was passed by the jurisdictional Civil Court in Civil Suit No.4A/82 amounting to ₹42,000/-, which is said to be paid by defendant No.1-Jogender Kaur and against which Mr.Gyan Singh promoted to execute sale deed in her favour in respect of the suit property, but as he failed to execute sale deed in favour of defendant No.1, she filed civil suit being Civil Suit No.7A/93 for specific performance of contract, which was decreed ex-parte on 26.10.1993 vide Ex.D/12 and in execution of that decree sale deed was executed through intervention of the Court vide Ex.P/2 and possession was delivered to defendant No.1 and that judgment and decree passed by the Civil Judge Class-I, Bilaspur in favour of defendant No.1 has become final as it has not been shown to have been assailed successfully before the higher Court by the plaintiffs, as such, by virtue of the decree of the competent Court, defendant No.1 has become title and possession holder of the suit property bearing khasra Nos.223/1 and 223/2 and possession has been delivered to her through intervention of the Court, as such, she is title-holder and possession holder of the suit

3 (1994) 5 SCC 547

4 (1999) 4 SCC 403

land and it is evident and established from the record, as such, both the Courts below are justified in holding that the plaintiffs are not entitled for decree for declaration of title.

11. It is the case of the plaintiffs that they are in possession of part of the suit land and therefore, they are entitled for decree for permanent injunction in their favour.

12. The trial Court has clearly recorded a finding that defendant No.1 is in possession of the suit land/house as she was given possession pursuant to the decree for specific performance of contract by the Civil Court. In appeal the appellants/plaintiffs contended to be in possession relying upon the order of temporary injunction passed in Civil Suit No.3A/96. The Appeal Court did not accept the case of the appellants/plaintiffs and affirmed the finding of the trial Court holding that the plaintiffs have mainly claimed the relief of declaration of title and consequently claimed relief of permanent injunction and his suit was not for only permanent injunction based on possession. The First Appellate Court has rightly observed that the plaintiffs' suit was for declaration of title and permanent injunction based on their title. It is for the first time now plea has been raised renouncing the claim of title stating that since they are in possession, their possession be protected. The appellants/plaintiffs cannot be permitted to raise a new plea for the first time in second appeal. However, the said plea is being examined on merit(s).

13. At this stage, it would be appropriate to notice Sections 36 and

41(j) of the Specific Relief Act, 1963 which state as under:-

“36. Preventive relief how granted.- Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual.

41. Injunction when refused.-An injunction cannot be granted-

(j) when the plaintiff has no personal interest in the matter.”

A bare reading of both these provisions would indicate, whereas granting preventive relief, whether it is temporary or permanent is purely at the discretion of the court. Such an injunction will not be granted when the plaintiff has no personal interest in the matter.

14. The statement of law in the book of Woodroff **“The Law relating to Injunctions”** 6th Edition 109 states as under:-

“Moreover, in all cases, it is to be remembered that in all the exercise of discretion given to it by the specific relief act, the courts will consider, not merely whether the plaintiff's right has been infringed or even materially infringed, but also whether under all the circumstances of the case, he ought to have granted an injunction as the proper and appropriate remedy for such infringements.”

14A. The following passage in corpus-juris-Secundum Vol-43

Chapter “Injunctions” at para-42 as under:-

“The grant or refusal of an injunction is a power of equitable jurisdiction. The power of a court of equity to grant writs of injunction antedates specific legislative sanction and ordinarily is not a statutory grant of power of a court.”

14B. In **American jurisprudence**, 2nd Edition Vol. 42 Article

23, reads as under:-

“Injunction is an equitable remedy and its grant or denial in a particular case is governed by those fundamental and established principles by which Courts of equity are guided and influenced in their judicial action and in the administration of relief. Some of the rules applicable to the exercise of the power are as binding on the Courts

as are the rules of law in any case; but in a measure, the application for injunction is addressed to the conscience and sound discretion of the Court. While the Court must act within and according to definite and certain principles and is not justified in exercising its injunctive power contrary to established rules, it is not obliged to shut its eyes to the demands of justice because under the particular circumstances presented no general rules authorizing the issuance of the writ may be found, where there are none forbidding it.

Equitable jurisdiction to grant injunctive relief will not necessarily be exercised in all cases where there has been a violation of legal right.”

Thus, an injunction will be granted to protect clear legal rights, but not to accomplish a wrong and the equities of case must be in favour of parties seeking the injunctive relief.

- 15.** In the matter of Nanibala v. Charu⁵ the Calcutta High Court made the following statement after consideration of all the principles and most of the decisions bearing on the topic:-

“It follows from the above principles laid down by the different authorities that grant of injunction is discretionary with court, the discretion has, however to be exercised after due consideration of all surrounding circumstances. It will not be correct to say that whenever there is an invasion of a right, the Court should grant injunction.”

Thus, injunction is in very nature of things a discretionary remedy, which does not issue for the mere asking and therefore does not obtain ex-debitio justitiae, but is generally issued to suppress, injury or mischief, where injury cannot be adequately be compensated by damages.

- 16.** The Supreme Court in the matter of Premji Ratansey Shah (supra) has held that injunction is discretionary and equitable relief

⁵ AIR 1979 Calcutta 309

of injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. It was observed as under:-

“4.....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. ”

17. The Supreme Court in the matter of Prataprai N. Kothari (supra) has held that it is well settled that even the owner of the property can get back his possession only by resorting to the due process of law. It was observed as under:-

“11. We have already extracted the summary of conclusion arrived at by the learned Single Judge of the High Court. That shows that his conclusions were vitiated by his view that the appellant had title and possession followed title. It is quite obvious that the learned Single Judge had not taken note of the principle of possessory title or the principle of law that a person who has been in long continuous possession can protect the same by seeking an injunction against any person in the world other than the true owner. It is also well settled that even the owner of the property can get back his possession only by resorting to the due process of law.”

18. In the matter of Sopan Sukhdeo Sable and others v. Assistant Charity Commissioner and others⁶ it has been held by the Supreme Court that no injunction can be granted against true owner. It was observed as under:-

“25. Now the other aspect of the matter needs to be noted. Assuming a trespasser ousted can seek restoration of possession under Section 6 of the Specific Relief Act, 1963, can the trespasser seek injunction against the true owner? This question does not entirely depend upon Section 6 of the Specific Relief Act, but mainly depends upon certain general principles applicable to the law of injunctions and as to the scope of the exercise of discretion while granting injunction. In *Mahadeo Savlaram Shelke v. Pune Municipal Corpn.*⁷ it was held, after referring to Woodroffe: Law Relating to injunctions; Goyle, L.C.: Law of Injunctions; Bean, David: Injunctions; Joyce: Injunctions and other leading articles on the subject that the appellant who was a trespasser in possession could not seek injunction against the true owner. In that context this Court quoted *Shiv Kumar Chadha v. Municipal Corpn. of Delhi*⁸ wherein it was observed that injunction is discretionary and that: (SCC p. 175, para 31)

“[J]udicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the court.”

26. Reference was also made to *Dalpat Kumar v. Prahlad Singh*⁹ in regard to the meaning of the words “prima facie case” and “balance of convenience” and observed in *Mahadeo* case that: (SCC p. 39, para 9)

“9. It is settled law that no injunction could be granted against the true owner at the instance of persons in unlawful possession.”

19. In Rame Gowda (supra) heavily relied upon by learned counsel for the appellants that the plaintiff in settled possession over the suit land even without title can be protected as against the true owner till he is evicted by any lawful order or by due process of law.

6 (2004) 3 SCC 137

7 (1995) 3 SCC 33

8 (1993) 3 SCC 161

9 (1992) 1 SCC 719

20. Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court in above-stated judgments (supra), it is quite vivid that both the Courts below have clearly held that defendant No.1 is title-holder of the suit land and it is the suit for declaration of title and consequently also claiming relief of permanent injunction. Injunction cannot be granted against defendant No.1 (true owner of suit land/house) at the instance of the appellants/plaintiffs.
21. The Supreme Court in Premji Ratansey Shah (supra) has clearly held that injunction would not be issued against the true owner. The two Courts below have rightly rejected the plea and dismissed the suit of the plaintiffs as the plaintiffs possession, if any, are wholly unlawful and no injunction can be granted against the true owner/defendant No.1. In view of finding recorded herein-above, both the Courts below are absolutely justified in holding that the plaintiffs are not entitled either for decree of declaration of title or for permanent injunction. The substantial question of law is answered accordingly. I do not find any illegality or perversity in the judgment and decree passed by both the Courts below.
22. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).
23. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge