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

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Date of decision : 05.02.2019

Hari Chand (D) through LR's and others

... Appellants

Versus

Lal Singh (D) through LR's

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the appellants.

None for the respondent.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, whereby the suit of the respondent-plaintiff for declaration, dismissed by the trial Court, has been decreed.

It was alleged that the plaintiff sought the injunction on the premise that according to the revenue record, the appellant-defendant was the owner of the disputed land measuring 39 kanals 8 marlas, whereas the plaintiff had been cultivating the suit land as tenant on the payment of Batai-Tihari, but the defendant with the consent of the plaintiff installed a tubewell in Khasra No.229//22 and in collusion with the revenue officials got the entries of cultivation in his favour since Rabi 1967 without the knowledge of the plaintiff. The entries of cultivation in favour of the

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defendant since Rabi 1967 were illegal, wrong and not binding on the rights of the plaintiff. When the defendant intended to dispossess the plaintiff, therefore, a cause of action accrued to file the suit.

The defendant opposed the suit and denied the possession of the plaintiff, rather asserted that the plaintiff in Rabi 1966, relinquished the possessory rights in the suit land in favour of the defendant, after receipt of ₹250/- and khasra girdawaries subsequent thereto, were in their name.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether the plaintiff is in possession of the suit land as tenant? OPP*
- 2. Whether the plaintiff had relinquished his possessory rights in the suit land in favour of the defendant after getting compensation as ₹250/- OPD*
- 3. Whether the civil court has no jurisdiction to try this suit? OPD*
- 4. Whether the suit is not maintainable in the present form? OPD*
- 5. Whether the suit is time barred? OPD*
- 6. Whether the plaintiff has no locus standi to file this suit? OPD*
- 7. Whether the plaintiff is estopped from filing this suit? OPD*
- 8. Whether the defendant is entitled to special costs u/s 35-A CPC and if so, to what amount? OPD*
- 9. Relief.*

In order to prove the case, the plaintiff examined as many as two witnesses and produced on record the documents Ex.P1 to Ex.P5. On the other hand, the defendant examined as many as five witnesses and tendered in evidence various documents Ex.D1 to Ex.D6.

On the basis of the evidence, the trial Court dismissed the suit,

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but the lower Appellate Court in appeal decreed the suit.

Mr. Akshay Bhan, learned Senior Counsel assisted by Mr. Santosh Sharma, learned counsel appearing on behalf of the appellant-defendant submitted that the lower Appellate Court has erroneously reversed the well reasoned findings of the trial Court by rejecting Ex.D1 to be unregistered document to file, but failed to advert to the fact that the suit was not for title, but for simpliciter injunction. A person, who is not found to be in possession, cannot be granted injunction, whereas the documentary evidence brought on record established the possession of the defendant since 1966, till filing of the suit, which was filed on 14.05.1981, thus, urges this Court for setting aside the judgment and decree, under challenge.

There is no representation on behalf of the respondents, which fact has been noticed in the order dated 27.11.2018. Accordingly, I proceed to decide the appeal on merits.

I have heard learned counsel for the appellant-defendant, appraised the paper book as well as the records of the Courts below and of the view that the following "Substantial Question of Law" arises for determination:-

Whether the judgment and decree of the lower Appellate Court suffers from illegality and perversity.

The appellant-defendant, through jamabandis for the year 1969-70 and for the year 1974-75 (Ex.D3 and Ex.D-4) as well as khasra girdawari for the year 1981-82 (Ex.D5), established his possession. It was obligatory upon the plaintiff, in order to substantiate the plea/averment in the plaint that he had been in long and settled possession, through the

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documentary evidence. Khasra girdawaris (Ex.P3 to Ex.P5) were of period from 1971 to 1980, but not immediately after filing of the suit or before. The law of injunction in favour of a person, who is in long and settled possession, has been referred to *in extenso* by Hon'ble the Supreme Court in "Rame Gowda (D) LRs V/s Mr. Varadappa Naidu (D) by LRs and another" 2004 (1) SCC 769, which has been reiterated recently by Hon'ble the Supreme Court in its decision dated 29.01.2019 rendered in Civil Appeal No. 4527 of 2009 titled as "Poona Ram Vs. Moti Ram (D) through LRS. & Ors.". For the sake of brevity, the relevant portion of the judgment rendered in Poona Ram's case (supra) reads as under:-

"9. The law in India, as it has developed, accords with jurisprudential thought as propounded by luminaries like Salmond. Salmond on Jurisprudence (12 Edn. at paras 5960 states:"

These two concepts of ownership and possession, therefore, may be used to distinguish between the de facto possessor of an object and its de jure owner, between the man who actually has it and the man who ought to have it. They serve also to contract the position of one whose rights are ultimate, permanent and residual with that of one whose rights are only of a temporary nature.

x x x x x

In English law possession is a good title of right against any one who cannot show a better. A wrongful possessor has the rights of an owner with respect to all persons except earlier possessors and except the true owner himself. Many other legal systems, however, go much further than this, and treat possession as a provisional or temporary title even against the true owner himself. Even a wrongdoer, who is deprived of his possession, can recover it from any person whatever, simply on the ground of his possession. Even the true owner, who takes

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his own, may be forced in this way to restore it to the wrongdoer, and will not be permitted to set up his own superior title to it. He must first give up possession, and then proceed in due course of law for the recovery of the thing on the ground of his ownership. The intention of the law is that every possessor shall be entitled to retain and recover his possession, until deprived of it by a judgment according to law.

*Legal remedies thus appointed for the protection of possession even against ownership are called possessory, while those available for the protection of ownership itself may be distinguished as proprietary. In the modern and medieval civil law the distinction is expressed by the contrasted terms *petitorium* (a proprietary suit) and *possessorium* (a possessory suit).*

*13. The crux of the matter is that a person who asserts possessory title over a particular property will have to show that he is under settled or established possession of the said property. But merely stray or intermittent acts of trespass do not give such a right against the true owner. Settled possession means such possession over the property which has existed for a sufficiently long period of time, and has been acquiesced to by the true owner. A casual act of possession does not have the effect of interrupting the possession of the rightful owner. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. Settled possession must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. There cannot be a straitjacket formula to determine settled possession. Occupation of a property by a person as an agent or a servant acting at the instance of the owner will not amount to actual legal possession. The possession should contain an element of *animus possidendi*. The nature of possession of the trespasser is to be decided based on the facts*

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and circumstances of each case.”

It is a case where the appellant-defendant has been able to belie the case of the plaintiff non-suiting from injunction, in the absence of any long and settled possession. In my view, the lower Appellate Court abdicated in laying focus on the receipt (Ex.D1), which was not the point of determination in a suit for injunction.

In view of what has been noticed above, the substantial question of law, as framed above, is answered in favour of the appellant-defendant and against the respondent-plaintiff. The judgment and decree of the lower Appellate Court is hereby set aside being perverse, fallacious and not sustainable in the eyes of law and that of the trial Court is restored.

Resultantly, the present regular second appeal is allowed.

05.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**