

RSA-1601-1988 (O&M)

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

RSA-1601-1988 (O&M)

Date of decision : 22.02.2019

Hissam Singh and others

... Appellants

Versus

Kamla Devi and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Avjeet Sahota, Advocate for
Mr. Jagdish Manchanda, Advocate
for the appellants.

None for the respondents.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate Court, whereby the injunction from forcible interference and dispossession with regard to the suit land detailed in para No.1 of the plaint except Khasra No.21/3 and 21/5 Rect. No.35, granted by the trial Court, has been reversed, in essence, the suit has been dismissed.

The plaintiff asserted that as per jamabandi for the year 1975-76, one Sureshwati widow of Dhani Ram, was owner of the suit land and the plaintiff had been in possession of the property, after her demise and being her legal heir, asserted to be owner. The possession was stated to be long and settled. The reliance was also laid on the mutation and the jamabandi.

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The defendants did not deny the ownership of the land, in the name of Sureshwati, but alleged that it was defendant No.1, who was the owner.

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

1. *Whether the plaintiff is owner in possession of the suit land, if so to what effect? OPP*
2. *Whether the defendants are liable to be restrained from interfering in the possession of the plaintiff? OPP*
3. *Whether the plaintiffs has no locus standi to file and maintain the suit? OPD*
4. *Whether the Court has not jurisdiction to try the suit? OPD*
5. *Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
6. *Whether the court fee is not properly affixed? OPD*
7. *Relief.*

The plaintiff examined himself as PW1 and brought on record jamabandi for the year 1975-76 (Ex.P1), copy of khasra girdawari from October 1977 till April 1979 (Ex.P2), Khasra girdawari for the period ranging from October 1977 to October 1980 (Ex.P3). On the other hand, the defendant No.1 examined herself as DW1 and brought on record copies of the mutation (Ex.D1 and Ex.D3) and copy of Aks Sajra (Ex.D2)

The trial Court on the basis of the evidence brought on record decreed the suit, but the lower Appellate Court in an appeal preferred by the defendants, reversed the judgment and decree of the trial Court, in essence, the suit was dismissed.

Ms. Avjeet Sahota, learned counsel appearing on behalf of the appellant-plaintiff submitted that the judgment and decree of the lower

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Appellate Court is totally against the settled proposition of law as sole genesis of reversing the judgment and decree was on the premise that no injunction can be granted against the co-owner, which is no longer a good law in view of the decision rendered by Hon'ble the Supreme Court in ***RameGowda (dead) by LRs V/s M. Varadappa Naidu (dead) by LRs and another 2004(1) SCC 769*** reiterated by the recent judgment passed in ***Civil Appeal No.4527 of 2009*** titled as ***Poona Ram Vs. Moti Ram (D) through LRs and others***, decided on 29.01.2019. The plaintiff has been able to prove long and settled possession, therefore, cannot be dispossessed except in due course of law.

There is no representation on behalf of the respondents. The appeal is of the year 1988, accordingly, I proceed to decide the appeal.

This Court, vide order dated 20.06.1988, while admitting the appeal, had also stayed the dispossession.

I have heard learned counsel for the appellant-plaintiff, 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:-

1. Whether the appellant-plaintiff, who is in long and settled possession, can be dispossessed except in due course of law?

Jamabandi (Ex.P1) and khasra girdawaris (Ex.P2 and Ex.P3), for the period, aforementioned, reflected the long and settled possession from 1975 till 1980, whereas the suit was filed in the year 1979. In such circumstances, the possession of the appellant-plaintiff was long and settled. Even if, the defendants were owners, they cannot dispossess the appellant-plaintiff except in due course of law and in case of tenant by

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seeking ejectment under the provisions of the Punjab Security of Land Tenures Act, 1953.

The law with regard to the injunction is no longer *res integra* in view of the decision rendered by Hon'ble the Supreme Court in **Rame Gowda's case** (supra) reiterated by the recent judgment passed in **Poona Ram's case** (supra), wherein it has been held that where a person who is in long and settled possession, cannot be dispossessed, except in due course of law. For the sake of brevity, paragraphs 9 and 13 of un-reported judgment passed in Poona Ram's case (supra), read 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 contrast 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 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

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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 and circumstances of each case.”

In view of what has been noticed above, the judgment and decree of the lower Appellate Court is hereby set aside and that of the trial Court is restored. The substantial question of law, as framed above, is answered in favour of the appellant-plaintiff and against the respondent.

Resultantly, the present regular second appeal is allowed.

22.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**