

RSA Nos.1568 & 1567 of 1992 (O&M)

1662

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

Date of decision : 06.02.2019

1.

RSA-1568-1992 (O&M)

Kashmiri Lal

... Appellant

Versus

Balwant Kaur and another

... Respondents

2.

RSA-1567-1992 (O&M)

Kashmiri Lal

... Appellant

Versus

Jagir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Swaich, Advocate
for the appellant.

None for the respondents.

AMIT RAWAL, J.

This order of mine shall dispose of two regular second appeals bearing **RSA No.1568 of 1992** titled as **“Kashmiri Lal V/s Balwant Kaur and another”**, arising out of the decision of Civil Suit No.308 of 1984, titled as "Punna Singh V/s Kashmiri Lal" and **RSA No.1567 of 1992**, titled as **“Kashmiri Lal V/s Jagir Singh and others”** arising out of Civil Suit No.225 of 1987 titled as "Kashmiri Lal V/s Jagir Singh and others".

In both the suits, the plaintiff sought the injunction against each

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other from dispossession of the property, in question. Since both the aforementioned suits were consolidated by the trial Court, vide order dated 20.10.1983, therefore, the facts are being taken from RSA No.1568 of 1992.

The plaintiff-Punna Singh instituted the suit against Kashmiri Lal, for permanent injunction on the premise that he was owner in possession of the suit property i.e. a house situated in Village Barwala, Tehsil Kalka, District Ambala, bounded as East : House of Rattan Singh, West: House of Kasmiri Lal, North: House of Babu Ram, South: Thorough Fare, located in Majri Harijana, Taraf Tarli, for the last 80 years, without any interference from any person. He was recorded as voter in the electoral list of Village Barwala as Gram Panchayat had exempted him from payment of Chula Tax, being a poor man. It was alleged that a house was constructed over it, consisting one room 15' x 12', pacca with a courtyard having a pacca enclosure of about 2' high, which opened towards thorough fare. The defendant along with his brothers, namely, Ishwar Singh and Som Nath, purchased the plot from Rattan Singh son of Teja and Phaman Singh son of Dilla Singh, on 24.09.1975. Both the plots were adjoining to each other. The house of the plaintiff, in the registered deed in favour of the defendants, was recorded as situated towards East of the plot, in question, but attempted to take forcible possession and thus, was constrained to file the suit as repeated requests did not yield any result.

The defendant opposed the suit by averring that the property was purchased from real owner Jagir Singh, Lal Singh, Bachan Singh. In the year 1964, the plaintiff had already sold his share, left Village Barwala and had been residing in Punjab. The alleged extension of threat was seriously disputed.

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Replication was filed, wherein the plaintiff denied the sale of his house and share in 1964, rather explained that he had been getting old age pension from the village, but had gone to Punjab to see his daughter.

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

- 1. Whether the plaintiff is owner in possession of the property in dispute? OPP*
- 2. Whether the suit is maintainable in the present form? OPP*
- 3. Whether the suit is bad for non-joinder of necessary parties? OPD*
- 4. Relief.*

The plaintiff, in support of the aforementioned pleadings, examined five witnesses and brought on record Ex.P1, copy of sale deed. On the other hand, the defendants examined three witnesses and tendered in evidence Ex.D1 to Ex.D5.

In rebuttal, the plaintiff examined Lal Singh as PW6 and produced the photographs as Ex.PW6/A.

The trial Court on the preponderance of evidence, decreed the suit and the lower Appellate Court also affirmed the decree of the trial Court in an appeal preferred by Kashmiri Lal.

The other suit filed by Kashmiri Singh was resultantly, dismissed and the aforementioned decree, was also affirmed.

Learned counsel appearing on behalf of the appellant-defendant submitted that judgments and decrees of the Courts below are not sustainable in the eyes of law as the plaintiff failed to prove the ownership

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and possession. The Courts below ought not to have given the finding qua title of the plaintiff in a suit for permanent injunction, therefore, there is abdication.

There is no representation on behalf of the respondents. The appeal is of the year 1992, accordingly, I proceed to decide the appeal on merits.

I have heard learned counsel for the appellant, appraised the paper book as well as records of the Courts below and of the view that 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 (dead) by LRs vs. 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, 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 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 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

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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 and circumstances of each case.”

The Courts below while exercising the jurisdiction ought not to have decided the issue of title, but only simpliciter injunction has been granted. Both the parties have propounded the sale deed, particularly when the plaintiff admitted that defendants had purchased, therefore, the title of the defendant was not under challenge, despite that the trial Court ought not to have given the finding that the defendant had not been able to prove the ownership, much less, possession. In my view, finding qua sale deed of defendant should be regarded as obiter.

As regards the injunction part, the defendants miserably failed to belie the documentary evidence brought on record regarding the possession of the plaintiff, particularly, when they were neighbour and their houses were adjoining to each other. Injunction granted is most innocuous and would not seriously affect the right of the defendants, particularly when the finding qua ownership is already held to be obiter.

In view of the aforementioned facts, the judgments and decrees cannot be said to be suffering from illegality and perversity. Accordingly, while upholding the judgments and decrees, under challenge, the present regular second appeals are disposed of, in the aforementioned terms.

06.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓
Whether speaking/reasoned Yes/ No
✓

Whether Reportable Yes/ No