

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

RSA No.87 of 1992 (O&M)

Date of decision:31.01.2019

Bir Bhan (since deceased) through LRs

... Appellant(s)

Vs.

Notified Area Committee Manimajra

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amit Jain, Advocate
for the appellant.

Ms. Deepali Puri, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings of fact and law whereby suit of the appellant-plaintiff for permanent injunction restraining the defendant from interfering into peaceful use and occupation of the house and Gharat shown as ABCDEF in the site plan attached belonging to the appellant-plaintiff since more than 14 years, has been dismissed.

It was alleged that plaintiff had been in exclusive possession as owner and constructed house. The adjoining land was acquired by the Notified Area Committee belonging to the plaintiff but the area under Government was not acquired. Under the garb of acquisition, Notified Area Committee intended to forcibly dispossess the plaintiff from the house and therefore, cause of action accrued to file the suit.

The defendant opposed the suit and admitted that house marked ABCDEF in the site plan was constructed by the plaintiff consisting of five rooms, a chappar, a verandah in front and the total covered area was 1405 square feet which was acquired under the notification dated 30.06.1976 under Section 4 of the Land Acquisition Act and the compensation for the land and house had already been paid, therefore, the plaintiff could not claim the ownership, rather had been in un-authorized occupation of the same.

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

1. Whether the plaintiff is the owner in possession of the property in dispute?OPP
2. Whether the property in dispute has been acquired by the defendant. If so, its effect?OPP
3. Whether the plaintiff is entitled to the decree for permanent injunction as prayed for?OPP
4. Relief.”

The plaintiff in support of the averments examined himself as PW1 and Rattan Singh Patwari, Land Acquisition Branch Estate Officer, Chandigarh as PW2 and brought on record judgment and decree as Ex.P1 and Ex.P2, copy of award as Ex.P3, copy of khasra girdawari as Ex.P5. On the other hand, defendant examined DW1, Bhupinder Singh as DW2, Prem Nath Kalia as DW3, Patwari as DW4 and brought on record the certified agreement for purchase of Gharat as Ex.D1, copy of judgment and decree as

Ex.D2, Ex.D3 and Ex.D4.

The trial Court on the basis of aforementioned evidence while noticing the statement of PW2-Rattan Singh Patwari that Gharat was not situated in khasra no.78/28 but in khasra no.196 and the aforementioned statement was corroborated to khasra girdawari Ex.P5, dismissed the suit on the premise that plaintiff did not give the exact khasra numbers in the plaint. In the appeal filed by the plaintiff, an application for amendment of the plaint was filed which was rebutted by Notified Area Committee and the pleadings were allowed to be taken on record in the amended plaint. In the amended plaint, the plaintiff sought the injunction in the following manner:-

“It is, therefore, prayed that the decree for permanent injunction be passed in favour of the plaintiff and against the defendant restraining the defendant that the defendant should not interfere in the peaceful use and occupation of the house and the gharat shown as ABCDEF in the site plan attached which is situated in khasra no.196 Min measuring 0-8 marlas and khasra no.196 Min measuring 0-2 marlas situated in village Mani Majra, H.B.No.375 Tehsil and District Chandigarh belonging to the plaintiff which is in his use and occupation and the defendant Committee should not forcibly dispossess the plaintiff from the house and gharat shown as ABCDEF with costs.

In the alternative consequential prayer for decree of possession of the disputed house or any of its part which is found in the possession of the defendant may be granted in

favour of the plaintiff and against the defendant in the interest of justice, along with costs throughout in favour of plaintiff against the defendant or other relief which Court deems fit.”

but despite that Lower Appellate Court dismissed the appeal.

Mr. Amit Jain, learned counsel appearing on behalf of the appellant-plaintiff submitted that defendant in paragraph 1 of the amended written statement stated that khasra no.196, measuring 0-10 marlas was not acquired as the said area was a waterway and under the ownership of Gram Panchayat in view of the provisions of Punjab Gram Panchayat Act and subsequently vested in the Notified Area Committee as per the provisions of Section 56 of the Punjab Municipal Act. Gharat was installed by one Prithivi Raj and the plaintiff was a sub-lessee thereof. He further submitted that once the land under the possession of appellant-plaintiff was found to be in khasra no.196 and not 78 as alleged by the respondent which was acquired, the Court below should have protected the possession by granting injunction of forcible interference and dispossession except in due course of law.

In support of the aforementioned contention, relied upon the judgment rendered by the Hon'ble 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.**

He further submitted that in view of the law laid down by the Full Bench of this Court in **Suraj Bhan and others vs. State of Haryana and another 2017(2) RCR (Civil) 934**, there has to be a procedure for taking away the valuable right of the effected party to prevent violation of Article 300-A and Section 31 of the Constitution of India and thus, urged this Court for determination of following substantial questions of law:-

- “1. Whether a person/plaintiff, who is in long and settled possession can be dispossessed except in due course of law?
2. Whether vesting of land could be deemed vesting without acquisition or compensation being violative of Article 300-A and Section 31 of the Constitution of India.”

Per contra, Ms. Deepali Puri, learned counsel appearing on behalf of the respondent-defendant submitted that plaintiff has not been able to establish the long and settled possession on khasra no.78 which has already been acquired but in view of the contents of written statement, does not dispute the possession on khasra no.196. Since the land had already been vested, liberty may be granted to seek the possession in accordance with law. It was further submitted that the concurrent findings of fact and law cannot be interfered with until and unless there is gross illegality and perversity.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is force and merit in the submissions of Mr. Jain.

For the sake of brevity, para 1 of the amended written statement, allowed by the trial Court reads as under:-

“1. Para no.1 of the plaint is admitted to the extent that a house shown in the site plan attached marked as ABCDEF was constructed by the plaintiff and the house consists of five rooms, a chhappar and verandah in front. The total covered area being 1405 square feet. The land and the house was acquired under notification under Section 4 of the Land Acquisition Act on 30th June 1976. The compensation for the land and the house had since been paid to the plaintiff. It is denied that the plaintiff is in possession as owner as alleged. The area of khasra no.196 measuring 0-10 marlas was not acquired as the said area was a waterway and vested in the Gram Panchayat under the provisions of the Punjab Gram Panchayat Act and subsequently in the Notified Area Committee, Manimajra under Section 56 of the Punjab Municipal Act. The said area adjoins the boundary of the Government High School, Manimajra. The gharat was installed by Prithvi Raj and the plaintiff was a sub-lessee thereof and the rent was being paid to Gram Panchayat, Manimajra.”

On conjoint reading of the aforementioned prayer and amended written statement, it is deciphered that khasra no.196 was not acquired as per the notification under Section 4 of the erstwhile Land Acquisition Act. The question which arises whether a person who is in long and settled

possession, which has not been disputed, can be dispossessed except in due course of law, the answer would be 'No'. The aforementioned view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme in Rame Gowda's case (supra) and as well as in paragraphs 9 and 13 of unreported judgment passed in Poona Ram's case (supra). The same 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 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.”

As regards the question of vesting, I am not in agreement with the contention of Ms. Puri as no documentary evidence has been placed on record to establish that it was Gharat or having a public water course. Be that as it may, it would be a farcical exercise in remanding the matter back in view of the relief of permanent injunction.

As an upshot of my findings, I am of the view that judgments and decrees of the Courts below are totally perverse and fallacious and not

in tandem with the ratio decidendi referred to above and thus, liable to be set aside.

The judgments and decrees of the Courts below are hereby set aside. The substantial questions of law aforementioned are answered in favour of the appellant-plaintiff and against the respondent-defendant. The decree of injunction is granted whereby respondent-defendant, his servant and agent are restrained from dispossessing the plaintiff and interfering into peaceful possession except in due course of law.

Resultantly, the regular second appeal is allowed.

(AMIT RAWAL)
JUDGE

January 31, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No