

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

RSA-1010-1998 (O&M)
Reserved on : 13.02.2023
Date of Decision : 28.02.2023

Jaimal Singh

....Appellant

VERSUS

Tirlochan Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rakshit Gupta, Advocate for
Mr. Rakesh Gupta, Advocate for the appellant.

None for the respondents.

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ALKA SARIN, J.

The present appeal has been preferred by the defendant No.2-appellant against the concurrent findings recorded by both the Courts below whereby the suit for permanent injunction filed by the plaintiff-respondent No.1 has been decreed.

The brief facts relevant to the present lis are that the plaintiff-respondent No.1, Tirlochan Singh, filed a suit seeking to restrain the defendants from interfering in his peaceful possession over the suit land measuring 8 kanals comprised in Khewat No.73/72, Khatoni No.26/1, Rectangle No.30, Killa No.10 situated with the revenue estate of Village Mandi Sadran, Tehsil Guhla, District Kurukshetra on the ground that his cultivating possession over the said land was continuous, peaceful and without any interruption for the last more than 12 years and that the defendants were totally strangers and had been

threatening to take possession of the same from him forcibly. The defendants i.e the defendant No.2-appellant as well as Arudh Singh and Kala Singh filed a joint written statement averring therein that defendant No.2-appellant, Jaimal Singh, and others were the owners and in actual cultivating possession of the suit land and that the plaintiff-respondent No.1 was never in possession of the same. It was further averred that the entries regarding possession in favour of the plaintiff-respondent No.1 in the revenue record are wrong, illegal, against true facts and a result of manipulation of revenue record in collusion with the Halqa Patwari. Defendant No.4, Raja, pleaded that she was owner in possession of the suit land through her husband Ram Dhari since 1962. Raja died in the year 1989 and thereafter her legal heirs became owners in possession from whom the defendant No.2-appellant, Jaimal, along with others purchased the suit land vide registered sale deed dated 22.08.1990 (Ex.D/12) and consequently, mutation No.399 (Ex.D/2) was sanctioned and since then the defendant No.2-appellant and others were in possession of the suit land. Replication was filed controverting the pleas raised in the written statement and reiterating those raised in the plaint.

On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is in possession of the suit land for the last more than 12 years as alleged ? OPP
2. Whether the plaintiff has got no locus standi to file the present suit ? OPD
3. Whether the suit of the plaintiff is not maintainable in the present form ? OPD

4. Whether the plaintiff has suppressed true and material facts, if so to what effect ? OPD
5. Whether the defendant is entitled for special costs. If so to what amount ? OPD
- 5-A. Whether the plaintiff has got no cause of sue ? OPD
- 5-B. Whether the suit is bad for misjoinder of necessary parties ? OPD
- 5-C. Whether the defendant is entitled for special costs ? OPD
6. Relief.

On the basis of the pleadings of the parties and the evidence on the record, the Trial Court vide judgment and decree dated 30.09.1995 restrained the defendants from interfering in the possession of the plaintiff-respondent No.1 over the suit land and further from dispossessing him except in due course of law. Aggrieved by the judgment and decree dated 30.09.1995, an appeal was preferred by defendant Nos.1 and 2 which appeal was dismissed vide judgment and decree dated 01.04.1998. Now the present regular second appeal has been preferred by defendant No.2-appellant.

None has put in appearance on behalf of the respondents despite being duly served. They are accordingly proceeded against ex-parte.

Learned counsel for defendant No.2-appellant has contended that there can be no injunction issued against the true owner. In support of his contention, learned counsel has relied upon **Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner [2006 (1) RCR (Rent) 138]**. Learned counsel has further contended that it has concurrently been found by both the Courts below that Smt. Raja wife of Ram Dhari was the owner of the suit land

on the basis of sale deed dated 23.08.1962 and that defendant No.2-appellant as well as defendant Nos.1 and 3 purchased the suit land vide sale deed dated 22.08.1980 from Sube Singh and others, heirs of Smt. Raja wife of Ram Dhari.

Heard.

In the present case, learned counsel for defendant No.2-appellant has not disputed that both the Courts below have concurrently found that plaintiff-respondent No.1 is in possession of the suit land since long although his possession is shown as *Gair Morusi*. However, in Column No.9 he has been recorded in unauthorized possession of the suit land. These entries have continued from 1982-83 upto 03.04.1991. Even thereafter, though entries were changed in favour of Sube Singh and others being successors-in-interest of Smt. Raja, however, the possession continued to be recorded as Badastur meaning thereby in continuation as recorded earlier. Defendant No.2-appellant along with others purchased the suit land vide sale deed dated 22.08.1990. Though the entry of possession was changed in favour of defendant No.2-appellant and others w.e.f 26.03.1992 on the basis of mutation No.399 (Ex.D/2), however, in the column of cultivation it continued to be recorded as Badastur i.e. as recorded earlier. In the judgment relied upon by the learned counsel for the defendant No.2-appellant in the case of **Sopan Sukhdeo Sable** (supra) it was held as under :

“24. There are two different sets of principles which have to be borne in mind regarding course to be adopted in case of forcible dispossession. Taking up the first aspect, it is true that where a person is in settled possession of property, even on the assumption that he has no right to remain in property, he cannot be disposed by the owner

except by recourse of law. This principle is laid down in Section 6 of the Specific Relief Act, 1963. That Section says that if any person is dispossessed without his consent from immovable property other wise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit. That a person without title but in "settled" possession - as against mere fugitive possession - can get back possession if forcibly dispossessed or rather, if dispossessed otherwise than by due process of law, has been laid down in several cases. It was so held by this Court in Yashwant Singh v. Jagdish Singh (AIR 1968 SC 620), Krishna Ram Mohate v. Mrs. Shobha Venkata Rao, (1989 (4) SCC 131,at p.136), Ram Rattan v. State of U.P. (1977 (1) SCC 188), and State of U.P. v. Maharaja Dharmender Prasad Singh (1989 (2) SCC 505). The leading decision quoted in these rulings is the decision of the Bombay High Court in K.K. Verma v. Union of India (AIR 1954 Bom. 358)."

In the case of **Rame Gowda (D) by LRs Vs. Mr. Varadappa Naidu (D) by LRs & Anr. [2004 (1) RCR (Civil) 519]**, it has been held as under :

"8. It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a

trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injunction even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. *It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram and Ors. Vs. Delhi Administration - (1968) 2 SCR 455, Puran Singh and Ors. Vs. The State of Punjab - (1975) 4 SCC 518 and Ram Rattan and Ors. Vs. State of Uttar Pradesh - (1977) 1 SCC 188.....”*

In view of the above and in view of the fact that the plaintiff-respondent No.1 is proved to be in settled possession, I do not find any illegality or infirmity in the judgments passed by both the Courts below. No question of law, much less any substantial question of law, arises in the present case. Pure findings of facts have been returned by both the Courts below which warrant no interference by this Court. The appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

28.02.2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No