



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

RSA-2663-2018 (O&M)
Date of decision : 13.08.2024

AVTAR SINGH

....Appellant

Versus

RAJESH AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Parveen Hans, Advocate
for the appellant.

PANKAJ JAIN, J. (ORAL)

Plaintiff is in second appeal.

2. For convenience, the parties herein after are referred to by their original position in the suit i.e. the appellant as the plaintiff and the respondents as the defendants.

3. Plaintiff filed the suit claiming tenancy over the suit land under one Smt. Shanti Bai widow of Bahadur Chand. It was further claimed by the plaintiff that in the year 2005, Shanti Bai sold the land in favour of Krishna Devi, defendant No.3. However, the cultivating possession remained with the plaintiff and thus claimed that successors-in-interest of Shanti Bai i.e. the defendants cannot dispossess the plaintiff except in due course of law.

4. Suit was contested by the defendants claiming that defendant No.3 purchased the suit property vide sale deed bearing Vasika No.3329 dated 17th of November, 2005 and since the time of purchase, defendant



No.3 is in possession of the suit property cultivating it through Rajender son of Ajit Singh. Possession of the plaintiff was denied.

5. On the basis of the pleadings of the parties, Trial Court framed the following issues :

- “1. Whether the plaintiff is entitled for the relief of prohibitory injunction as prayed for? OPP
 2. Whether the plaintiff has no locus-standi and cause of action 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 is estopped from filing the present suit by his own act and conduct? OPD
 5. Whether the civil court has got no jurisdiction to try and entertain the present suit? OPD
- Relief”

6. While returning finding on issue No.1, Trial Court found that the plaintiff failed to produce any documentary evidence showing his status as tenant over the suit land. The only document in form Exhibit D1 i.e. DDR No.41 dated 18th of June, 2008 related to alleged theft reported by the defendants of the suit land, was not enough to return the finding w.r.t. lawful possession of the plaintiff to grant him decree of injunction.

7. The aforesaid findings stand affirmed by the lower Appellate Court in the appeal preferred by the appellant.

8. While assailing the impugned judgment and decree passed by the Courts below, Mr. Hans counsel for the plaintiff submits that the Courts



below have totally ignored the documentary evidence on record. He submits that the plaintiff proved on record *nahri girdawaris* to prove his possession over the suit land. However, the Courts below failed to appreciate the same in the light of DDR Exhibit P-1. He further submits that once the plaintiff proved his possession on record rightfully or wrongfully, he was entitled for decree of injunction and cannot be evicted except in due course of law.

9. I have heard counsel for the appellant and have carefully gone through records of the case.

10. So far as the title of defendant No.3 is concerned, the same is not in dispute. Positive case of the plaintiff is that he was inducted tenant by predecessors-in-interest of defendant No.3 i.e. Shanti Bai. However, counsel for the plaintiff is not in position to dispute that there is no revenue record or documentary evidence on record to show that the plaintiff was in possession of the suit land as tenant by paying rent. Trite it is that a person recorded merely as *gair marusi* in *nahri girdawaris* cannot succeed until and unless he proves the rate of rent on which he was inducted as tenant.

11. Law w.r.t. grant of injunction and possession is well laid down by the Apex Court in **Sopan Sukhdeo Sable vs. Asstt. Charity Commissioner (2004) 3 SCC 137** holding as under:

“23. Another plea which has been raised with some amount of vehemence by the appellant is the alleged forcible possession. The plea is strongly disputed by learned counsel for the respondent-trust who says that the possession was taken in accordance with



law and as noted above, by voluntary surrendering by most of the tenants. Much of this controversy revolves from the date till the order of injunction passed by the trial Court operated.

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 dispossessed by the owner except by recourse to 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 Supreme Court 620, *Krishna Ram Mohate v. Mrs. Shobha Venkata Rao*, 1989(4) SCC 131, at p. 136 : 1990(1) RCR (Rent) 525 (SC), *Ram Rattan v. State of U.P.*, 1977(1) SCC 188 and *State of U.P. v. Maharaja Dharmender Prasad Singh*, 1989(2) RCR (Civil) 31 (SC) : 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 Bombay 358.

25. Now the other aspect of the matter needs to be noticed. Assuming a trespasser ousted can seek restoration of possession under Section 6 of the Specific Relief Act, 1963 can the trespasser seek injunction against the true owner. This question does not entirely depend upon Section 6 of the Specific Relief Act, but mainly depends upon certain general principles applicable to the law of injunctions and as to the scope of the exercise of discretion



while granting injunction ? In *Mahadeo Savlaram Sheika v. Pune Municipal Corporation, 1995(2) RCR (Civil) 65 (SC) : 1995(3) SCC 33*, it was held after referring to Woodroffe on "Law relating to Injunction"; L.C. Goyal 'Law of Injunctions'; David Bean 'Injunction'; Jayce on Injunctions and other leading articles on the subject that the appellant who was a trespasser in possession could not seek injunction against the true owner. In that context this Court quoted *Shiv Kumar Chadha v. M.C.D., 1993(3) SCC 1661 : 1993(3) RCR (Civil) 236 (SC)* wherein it was observed that injunction is discretionary and that :

"Judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the Court".

26. Reference was also made to *Dalpat Kumar v. Prahlad Singh, 1992(1) SCC 719 : 1992(3) RCR (Civil) 457 (SC)* in regard to the meaning of the words 'prima facie case' and 'balance of convenience' and observed in Mahadeo's case (supra) that :

"It is settled law that no injunction could be granted against the owner at the instance of a person in unlawful possession."

27. The question of forcible possession as claimed is also a matter which can be pressed into service by the parties before the trial Court and if raised the Court shall deal with it considering its relevance to the suit and accept it or otherwise reject the plea in accordance with law. We do not think it necessary to express any opinion in that regard."

12. Thus, this Court is of the opinion that the plaintiff having failed to prove his lawful possession cannot claim decree of permanent injunction against defendants who are true owners of suit land. Keeping in view that the pure findings of fact have been recorded by the Courts below after



analyzing the evidence on record and there is no evidence to prove that the plaintiff was ever in cultivating possession of the suit land as tenant, this Court does not find any reason to interfere in the instant second appeal. Resultantly, the same is dismissed.

August 13, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No