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S.A. No. 630 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-11-2025

CORAM

THE HON'BLE DR.JUSTICE R.N.MANJULA

S.A.No.630 of 2011

Krishnan,
S/o.Gangarai Gounder,
Veerappan Nayakkanpatti,
Harur Taluk,
Dharmapuri District.

..Appellant / Plaintiff

Vs

1.Prakasam (Deceased)
S/o.Senga Gounder

2.Ramachandran (deceased)
S/o.Senga Gounder

3.Ranganayagi
W/o.Ramachandran

4.Ragupathy,
S/o.Ramachandran

5.Ravi
S/o.Ramachandran

6.Rajeswari
D/o.Ramachandran



RR3 to 6 residing at:

Veerappan Nayakkanpatti Village (PO),
Harur Taluk,
Dharmapuri District.

(RR3 to 6 brought on record as LRS of the
deceased 2nd respondent vide Court order dated
15.02.2017 made in M.P.Nos.1 to 3/2011 in
S.A.No.630/2011)

7.Rani

W/o.Prakasam

8.Praveen @ Soundariyan

S/o.Prakasam

9.Priyadarshini

D/o.Prakasam

All are residing at Veerappan Nayakkanpatti
Village (PO),
Harur Taluk,
Dharmapuri District.

(RR7 to 9 brought on record as legal
representatives of the deceased R1 vide court
order dated 14/09/2017 made in
C.M.P.No.13857 & 13858/2017 in S.A.No.630
of 2011)

..Respondents/Defendants

PRAYER : Appeal filed under Section 100 of CPC., against the judgment and
decree of the Sub Court at Harur dated 21.04.2011 in A.S.No.21 of 2010
reversing the judgment and decree of the District Munsif Court at Harur dated
26.02.2010 in O.S.No.130 of 2005.



For Appellant: Mr.P.Valliappan,
Senior Counsel
for Mr.G.R.M.Palaniappan

For RR4 to 9: Mr. V.Nicholas

JUDGMENT

The plaintiff is the appellant who has filed the suit seeking for the relief of permanent injunction. The District Munsif Court at Harur had decreed the suit by order dated 26.02.2010 in O.S.No.130 of 2005. On an appeal preferred by the defendants, the Sub Court at Harur allowed the appeal by judgment and decree dated 21.04.2011 in A.S.No.21 of 2010, reversing the judgment of the Trial Court. Aggrieved over that, the plaintiff/appellant has filed the present Second Appeal.

2. The short facts pleaded in the plaint are as follows:

The suit properties are punja lands belonging to the Government. The plaintiff and his ancestors were in enjoyment of the same, along with their own



properties, for more than 50 years. The defendants are brothers. They purchased the lands on the southern side of the suit property two years prior to the cause of action for the suit. As the plaintiff also intended to purchase the same lands and because of the motive between the parties, the defendants started to interfere with the plaintiff's enjoyment over the suit property. They attempted to lay pipelines through the plaintiff's lands to take water to their newly purchased lands. The same was prevented by the plaintiff. But again, the defendants, with their henchmen, declared that they would grab the suit property from the plaintiff. Hence, the plaintiff has filed the suit, praying for the relief of permanent injunction.

3.The averments made in the written statement filed by the defendants are in brief:

The suit property is a Government Poromboke land. The suit property is a road available to reach a lake from Veerappan Nayakkanpatti to Kappukadu, that has been used by the defendant's and other land owners as road. Even in the Revenue Records, the above property has been shown as public road. The



defendants have their properties on the eastern side of the lake in Survey No. 103/2B1, and they have a well and an electric motor on the same land. On the

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western side, there is a **fy;Yf;fl;L** at the plaintiff's property, situated beyond the same. Neither the plaintiff nor their ancestors have been in enjoyment of the suit property. As the suit property is a Government poramboke public road, the Tahsildar of Harur Taluk had allowed the defendants to take water to their land by laying a 3 inch P.V.C pipeline at a depth of 3 ½ feet from the ground level. As the plaintiff has no right over the suit property, the suit should be dismissed.

4. On the basis of the above pleadings, the Trial Court has framed the following issues:

“1/ thjp nfhUk; ghpfhuk; thjpf;F
fpilf;fj;jf;fjh>



2//jhth brhj;ij thjpa[k; mtuJ K:jhijaUk;
fle;j 50 tUl';fSf;F nkyhf mDgtk; bra;J
tUfpwhh;fs; vd;gJ rhpah>

3/ gpuijpthjpf; jug;gpy; jhth brhj;J bghJ
tHp rhiy vd;W tUtha;Jiw Mtz';fspy;
Fwpg;gplg;gl;Ls;sJ vd;gJ rhpah>

4/jug;gpdh;fSf;F fpilf;fj;jf;f ntW ghpfhuk;
VnjDk; cs;sjh>”

5. During the course of the trial, on the side of the plaintiff, two witnesses were examined as PW1 and PW2, and Exs.A1 to A14 were marked. On the side of the defendants, four witnesses were examined as DW1 to DW4, and nine documents were marked as Exhibits D1 to D9. The witness-side documents were marked as Exs.X1 to X5. A court witness was also examined as C.W.1 and three documents were marked as Exs.C1 to C3. At the conclusion of the trial,



and after considering the evidences available on record, the learned Trial Judge

decreed the suit. On an appeal preferred by the defendants before the Sub Court,

Harur, the First Appellate Court allowed the appeal by setting aside the judgment of the Trial Court.

6. Aggrieved over that, the present Second Appeal has been filed by the plaintiff. The Second Appeal has been admitted on the following substantial questions of law on 02.06.2011:

“(i) When Exs.A13 and A14 decree and judgment in the earlier proceedings, clearly prove the right of the appellant over the suit property, whether the lower appellate court is correct in law in non-suiting the appellant? And

(ii) Whether the lower appellate Court is correct in law in denying the relief of permanent injunction despite finding that the appellant is in possession over the suit property?”

7. The learned Senior Counsel appearing for the appellant submitted that both the courts below had admitted the possession of the plaintiff over the suit property. The Trial Court had held that the plaintiff is in legal possession,



whereas the First Appellate Court held that the possession of the plaintiff is not legal. The only contention of the defendants is that the suit property is the only

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pathway available to reach the Vhp from Veerappan Nayakkanpatti to Kappukadu. The Commissioner, who was examined as P.W.1 and who filed a report and plan, has stated in his evidence that there is no possibility to use the suit property as a pathway, and that there is a road running on the southern side from the road leading to Veerappan Nayakkanpatti, through which Kappukadu can be reached. Therefore, the written statement filed by the respondents claiming that the suit property is the only pathway is disproved. However, the plaintiff did not admit his signature in Ex.A4. In this regard, the plaintiff had sent notices to various authorities, which would only show that his signature had not been obtained voluntarily for Ex.A4. In fact, the appellant had filed a Writ Petition in W.P. No.11215 of 2005, in which an order was passed directing the respondent Government to comply with the provisions contained in the Land Encroachment Act, 1905, before evicting the petitioner. The said order has been marked as Ex.A9. The appellant had already filed two civil suits in O.S. Nos. 188 of 2005 and 53 of 2007, against the District Collector and Tahsildar,



seeking the relief of permanent injunction not to evict him from the suit property except under due process of law. Both the suits were decreed, and the said judgment and decree have been marked as Exhibits A13 and A14 respectively. When these documents clearly show the settled possession of the plaintiff over the suit property, no person except the Government can dispute the plaintiff's possession. If the Government allows the defendants to lay a pipeline in the suit property, it would amount to disturbing the plaintiff's possession without resorting to due process of law.

8. In support of his contentions, the learned Senior Counsel for the appellant placed reliance on the decisions of the Hon'ble Supreme Court in the following cases reported in:

(i) *(1989) 4 SCC 131 [Krishna Ram Mahale (dead), by his Lrs. Vs.*

Shobha Venkat Rao]

“8. Mr. Tarkunde, learned Counsel for defendant No. 3, the appellant herein, rightly did not go into the appreciation of the evidence either by the Trial Court or the High Court or the factual conclusions drawn by them. It was, however,



*strongly urged by him that the period of licence had expired long back and the plaintiff was not entitled to the renewal of licence. It was submitted by him that in view of the licence having come to an end, the plaintiff had no right to remain in charge of the business or the premises where it was conducted and all that the plaintiff could ask for was damages for unlawful dispossession even on the footing of facts as found by the High Court. We find ourselves totally unable to accept the submission of Mr. Tarkunde. It is a well-settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. If any authority were needed for that proposition, we could refer to the decision of a Division Bench of this Court in *Lallu Yeshwant Singh v. Rao Jagdish Singh and Ors.* . this Court in that judgment cited with approval the well-known passage from the leading privy Council case of *Midnapur Zamindary Company Limited v. Naresh Narayan Roy* 51 I.A. 293 at p. 299. where it has been observed (p-208):*

In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court.



9. *This proposition was also accepted by a Division Bench of this Court in Rant Rattan and Ors. v. State of Uttar Pradesh . The Division Bench comprising of three learned Judges held that a true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in*

accomplishing his possession to the knowledge of the true owner. In such circumstances, the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under the law. In the present case, we may point out that there was no question of the plaintiff entering upon the premises as a trespasser at all, as she had entered into the possession of the restaurant business and the premises where it was conducted as a licensee and in due course of law. Thus, defendant No. 3 was not entitled to dispossess the plaintiff unlawfully and behind her back as has been done by him in the present case. It was pointed out by Mr. Tarkunde that some of the observations referred to above were in connection with a suit filed under Section 6 of the Specific Relief Act, 1963 or analogous provisions in the earlier Specific Relief Act, 1877. To our mind, this makes no difference in this case as the suit has been filed only a few weeks of the plaintiff being unlawfully deprived of possession of the said business and the premises and much before the period of six months expired. In view of the aforesaid conclusions arrived at by us, we do not propose to consider the question whether the agreement between the plaintiff and defendant No. 3 amounted to a licence or a sub-lease”

(ii) 1999 AIR SCW 1284 [Prataprai N.Kothari Vs. John Braganza]:



“10. Reliance was sought to be placed on the additional evidence admitted by the learned Single Judge during the pendency of the appeals to prove that the appellant had title to the property. It is settled law that in the absence of any plea, no evidence is admissible. The Single Judge of the High Court overlooked that when there was no plea or issue on the question of title, no evidence whatever was admissible regarding the same. He acted beyond his jurisdiction in permitting additional evidence to be filed in appeals.

11. We have already extracted the summary of conclusions arrived at by the learned Single Judge of the High Court. That shows that his conclusions were vitiated by his view that the appellant had title and possession followed title. It is quite obvious that the learned Single Judge had not taken note of the principle of possessory title or the principle of law that a person who has been in long continuous possession can protect the same by seeking an injunction against any person in the world other than the true owner. It is also well settled that even the owner of the property can get back his possession only by resorting to due process of law.”



(iii) (2004) 1 SCC 769 [Rame Gowda (dead) by LRs. Vs. M.Varadappa

Naidu (dead) by LRs. and another]:

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“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 injuncting even a rightful owner from using force or taking the law in his own hands, and also by resorting 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

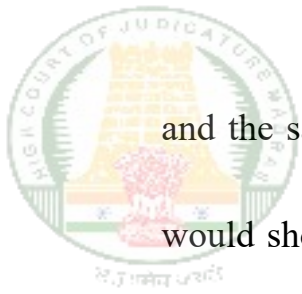


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of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.”

9. Learned counsel appearing for the respondents 4 to 9 submitted that the suit itself is not maintainable. As per Section 41(j) of the Specific Relief Act, 1963, the plaintiff has no personal interest in the matter, and therefore no relief of injunction can be obtained. The Tahsildar, Harur, has given permission to the 1st defendant to lay pipelines in the suit property for taking water to their lands for agricultural purposes, and that cannot be prevented by the plaintiff by filing the suit without impleading the Government as a party. The said permission order has been marked as Ex.B3. The present suit was filed in the year 2005, whereas the order of the Tahsildar/Ex.B3 was issued in the year 2006, during the pendency of the suit. Ex.B3 has not been challenged by the plaintiff so far. The plaintiff has filed another suit in O.S. No. 53 of 2007, subsequent to the issuance of Ex.B3, but in that suit he has not mentioned any of these facts, nor has he impleaded the defendants as parties in O.S. No. 53 of 2007. A Revenue Official, who was examined as D.W.4, has filed certified copies of entries from the 'A' Register, in which Survey No. 141/2001 (suit property) is shown as jhpR,



and the same has been marked as Ex.X1. The Commissioner's report and plan

would show that there is a pathway in the suit property, and there are marks to show that people have been using the same as a walkway. All these aspects have been rightly considered by the First Appellate Court, and consequently, the decree passed by the Trial Court was set aside. As the First Appellate Court has rightly appreciated the evidence on record, this Second Appeal is liable to be dismissed.

10. Heard the learned counsel on both sides and perused the entire materials on record.

11. The fact that the suit property belongs to the Government is not in dispute. Both the plaintiff and the defendants have made it very specific that the suit property belonged to the Government. The plaintiff has already filed suits in O.S.Nos.188 of 2005 and 53 of 2007 against the Government for seeking the relief of permanent injunction. In those suits, the relief sought by the plaintiff is that his settled possession in the suit property cannot be disturbed even by the



true owners/Government respondent, without resorting to due process. He has

also obtained those injunctions against the Government and Government

Officers and the judgment and decree obtained in those suits have been marked

as Exs.A13 and A14. The respondents/defendants have stated that the suit

property is a public road which is being used by the public in order to reach the

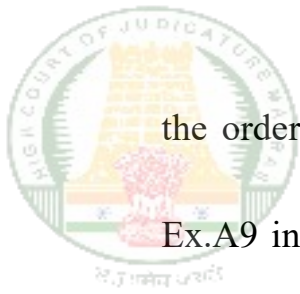
lake from Veerappan Nayakkanpatti road. Learned counsel for the respondents'

further submission is that through Ex.B3, the Tahsildar has also given

permission to the 1st defendant to lay pipe lines through the suit property to take

water to his patta lands.

12.The appellant/plaintiff has already filed a Writ Petition against the Government for issuance of Writ of Mandamus from forbearing the respondents from interfering with the possession of his lands to an extent of 25 Cents in Survey No.141/1, Veerappan Nayakkanpatti Village, Harur Taluk, Dharmapuri District, which is the suit property. The said Writ Petition has been disposed on 04.04.2005 with a direction to the respondents to comply with the provisions of the Land Encroachment Act, 1905, before evicting the petitioner. Even though



the order has been passed as early as 04.04.2005, which has been marked as

Ex.A9 in this suit, the Government has not so far taken any steps to evict the appellant from the suit property by resorting to the due process of law. Even though the plaintiff has filed earlier suits and Writ Petition against the Government and got order to protect his possession except under due process of law, he had once again filed the present suit against the defendants seeking the relief of permanent injunction.

13.The defendants who have not been impleaded as party in the earlier suits filed by the plaintiff has been given with the permission through Ex.B3 to lay pipelines through the suit property. The appellant/plaintiff perceived the permission so granted by the authorities as the inference to his settled possession of the suit property and had sought the relief of permanent injunction against the defendants also. The learned Trial Court has appreciated the earlier orders that had been obtained by the appellant/plaintiff against the Government in order to protect his possession. It also appreciated the fact that the Revenue records does not show that there is a pathway or road in the suit property.



Reliance was placed on Ex.X2 – F.M.B Sketch, which also does not show any pathway over the suit property. One of the official witness who has been examined as D.W.4 and who has authenticated the issuance of Ex.B3, permission of the 1st defendant, has stated that in 'A' Register, the suit property has been shown as pathway, though in reality it is not a pathway. He has admitted in his evidence during cross-examination that had there been a pathway in use for long time, that would have got reflected in F.M.B sketch.

14.Ex.X5 is a proceeding on the Peace Committee held on 02.10.2005.

The learned counsel for the appellant submitted that even at the time when the said document was marked, it was objected by the plaintiff. However, in the pleadings he has stated that Ex.X5 has been obtained by force and he did not give any consent voluntarily. Whatever may be the case, the suit property is a Government Poromboke, in which the plaintiff/appellant was continuing to be in enjoyment. For the reasons best known to the Government authorities, they have not taken any steps to evict the plaintiff yet. The defendants' contention



that the suit property is a pathway is also not proved before the Court in view of the entries in 'A' Register and the features seen in Ex.X2 – F.M.B Sketch.

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15. So the categorical contention of the appellant/plaintiff is that when the true owner who is the Government has not initiated any action to evict the plaintiff from the suit property and the earlier judgments of this Court have also acknowledged the settled possession of the plaintiff in the suit property, the defendants who are third persons cannot disturb his possession in any manner. Even though the appellant/plaintiff is not the owner of the suit property, with regard to entitlement of the possession, the plaintiff/appellant stands in a better manner than the defendants in view of the fact that he had settled his possession over the suit property.

16. It is submitted by the learned Senior Counsel for the appellant/plaintiff that if the defendants are given permission to lay the pipeline in the suit



property which measures 26 Cents, that would spoil the crops raised by the appellant over the suit property. Despite the appellant/plaintiff has found the cause of action this time in the form of permission given to the defendants to lay pipelines in the suit property by the Government, for the reasons best known, neither has he impleaded the Government respondent as parties, nor had he chosen to challenge Ex.B3, permission order granted to the 1st defendant by way of initiating appropriate proceedings.

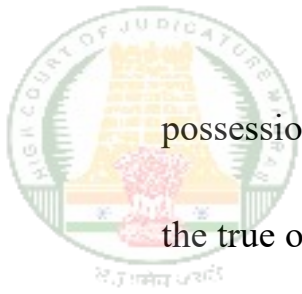
17.It is true that the defendants have not taken the plea of non-joinder of necessary parties in the written statement. Even though the defendants also got grievances against the plaintiff that he did not let him enjoy the permission granted to him to lay pipeline through the suit property, they did not initiate any action by impleading the Government as party to any proceedings and did not even seek directions against the Government to evict the plaintiff from the suit property.



18. All these factors continue to work in favour of the appellant/plaintiff,

who claims possession over the suit property against the third parties and claim protection to his possession against third persons like the defendants as well as the true owner, who is the Government. The First Appellate Court has observed that the Government has issued the notice under Section 6 of the Land Encroachment Act, 1905 and this Court had directed the Government to issue notice under Section 7 of the Land Encroachment Act, 1905 to proceed further. The Government has to rise up to the occasion and initiate appropriate action to evict the appellant/plaintiff from the suit property pursuant to the direction already given in this regard in the earlier order passed in W.P.No.11215 of 2005.

19. Though the appellant/plaintiff is not the owner and he cannot assume any title in his favour against the true owner, he has the right to protect his possession over the suit property until the true owner takes steps to evict him under due process of law. In this regard, it is appropriate to cite the judgment of the Hon'ble Supreme Court reported in *(2004) 1 SCC 769* [referred to earlier], wherein it is held that “If a person is proved to be in lawful possession, his



possession cannot be invaded and threatened by a person who had no title. Even

the true owner who has the title needs to take recourse to law and to that limited

extent, the person in settled possession shall have the right to protect his

possession”. The relevant part of the above judgment are 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 injuncting even a rightful owner from using force or taking the law in his own hands, and also by resorting 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. The authorities need not be multiplied. In [Munshi Ram & Ors.'s](#) case (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not



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*give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re- instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. 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. In *Puran Singh and Ors.'s case (supra)*, the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The '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. The phrase 'settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession' :*

- i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;*



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- ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;*
- iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and*
- iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession.*

10. In the cases of [Munshi Ram and Ors.](#) (supra) and [Puran Singh and Ors.](#) (supra), the Court has approved the statement of law made in [Horam Vs. Rex](#) AIR 1949 Allahabad 564, wherein a distinction was drawn between the trespasser in the process of acquiring possession and the trespasser who had already accomplished or completed his possession wherein the true owner may be treated to have acquiesced in; while the former can be obstructed and turned out by the true owner even by using reasonable force, the latter, may be dispossessed by the true owner only by having recourse to the due process of law for re-acquiring possession over his property.



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11. In the present case the Court has found the plaintiff as having failed in proving his title. Nevertheless, he has been found to be in settled possession of the property. Even the defendant failed in proving his title over the disputed land so as to substantiate his entitlement to evict the plaintiff. The Trial Court therefore left the question of title open and proceeded to determine the suit on the basis of possession, protecting the established possession and restraining the attempted interference therewith. The Trial Court and the High Court have rightly decided the suit. It is still open to the defendant-appellant to file a suit based on his title against the plaintiff-respondent and evict the latter on the former establishing his better right to possess the property.”

20. Even though the Government has got the better entitlement to take possession of the suit property, for the reasons not known, it has not taken any serious action to evict the appellant/plaintiff. Time and again, it has been held and it has become a trait law that if a person is in settled possession of the property, even on the assumption that he had no right to remain on the property he cannot be dispossessed by the owner of the property, except by adopting the due process. The above dictum has been laid down by the Hon'ble Supreme



Court of India in the judgment reported in *(1989) 4 SCC 131* [referred to earlier].

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21.When comparing the plaintiff with the Government, the Government have got the better right or possession over the suit property than the plaintiff, even though he has proved to be in settled possession over the suit property. If comparison is made between the plaintiff and the defendants, the plaintiff is in the better possession than the defendants who are a complete third party, who does not have title or possession over the suit property. Since the plaintiff has established his possession over the suit property even against the true owner in view of the orders passed in the earlier proceedings which has been marked as Exs.A13 and A14, the defendants cannot in any way disturb the possession of the appellant/plaintiff and assume a better right than the plaintiff. Even though the Trial Court has appreciated the evidence in a proper perspective, the First Appellate Court appears to have got too sensitive about unlawful possession of the plaintiff against the Government. It is to be noted that the plaintiff never claimed lawful possession over the suit property against the true owner. He did



not deny his status as encroacher over the suit property. Even though the plaintiff/appellant is in unlawful possession over the suit property, he can be disturbed only by the rightful owner, not by the third party. Thus, both the Substantial Questions of Law are answered.

22.In view of the above stated reasons and the answers given to the Substantial Questions of Law, the Second Appeal is **allowed** and the judgment and decree of the learned Subordinate Judge at Harur dated 21.04.2011 made in A.S.No.21 of 2010 is set aside and order of the learned District Munsif at Harur dated 26.02.2010 made in O.S.No.130 of 2005 is restored to file. No costs.

18-11-2025

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

GSA

To

1.The Subordinate Judge,
Harur.



2.The District Munsif,
Harur.

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DR.R.N.MANJULA, J.

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