
(1998) 07 P&H CK 0178

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 11379 of 1997

Om Parkash

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-07-1998

Acts Referred:

Specific Relief Act, 1963 — Section 41

Citation : (1999) 121 PLR 155

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : Sanjiv Gupta, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Sat Pal, J.—In this case admittedly the appellant has been found as unauthorised occupant by both the Courts below. In view of this finding the suit of the appellant-plaintiff is not maintainable for permanent injunction against the true owner. In this connection reference may be made to a judgment of the Supreme Court in Premji Ratansey Shah and Others Vs. Union of India (UOI) and Others, , wherein it was held:-

"It is equally settled law that injunction would not be issued against the true owner. Therefore, the Courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of trespasser or a person who gained unlawful possession as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner."

2. The learned counsel has, however, referred to a recent judgment of the Supreme Court in Walter Louis Franklin (dead) through LRs. v. George Singh (dead) through LRs. 1997(2) R.C.R. 41 (SC). I, however, find that the facts of

this case relied upon by the learned counsel for the appellant are not similar to facts of the case before me. In the case of Walter Louis Franklin (*supra*) the plaintiff had pleaded that he had purchased the property in question from the church under a sale deed in the year 1937 and in that case the possession of the plaintiff was not found unauthorised whereas in the present case the appellant is admittedly an unauthorised occupant.

For the reasons recorded herein above, I do not find any merit in this appeal and the same is dismissed in limine.