

(2005) 07 P&H CK 0052

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3580 of 2000

Tarsem Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 04-07-2005

Acts Referred:

Citation : (2005) 3 CivCC 796 : (2005) 141 PLR 594 : (2005) 3 RCR(Civil) 645

Hon'ble Judges : Jasbir Singh, J

Bench : Single Bench

Advocate : L.N. Verma, for the Appellant; Ravi Kant Sharma, Asstt. A.G., for the Respondent

Judgement

Jasbir Singh, J.—Appellants (plaintiffs) filed a suit for declaration to the effect that they had become owners in possession of the land, description of which was given in heading of the plaint. It was further prayed that consequential relief for permanent injunction be granted to them, restraining respondent Nos. 1 and 2, not to interfere in their ownership and possessory rights in that land. It is apparent from the records that to claim ownership, appellant had based their claim on adverse possession. After contest, their suit was dismissed. They also failed to appeal. Hence, this Regular Second Appeal.

2. Before the trial Court, it was the case of the appellants that they are owners and are in peaceful possession of the land, in dispute, for the last more than 30 years, without any interruption and also without payment of rent to the respondents. They had constructed their houses over that property. Their possession was never objected by the respondents, rather, they have been provided with all facilities, like sewerage, drinking water and electricity etc. Municipal authorities have even sent notice for collection of house tax from the appellants. It was further asserted that their possession was in the knowledge of the respondents, despite that, no attempt was ever made to dispossess them from the land, in dispute. They were compelled to file the present suit, when an attempt was made by the respondents to dispossess them forcibly from the land,

in dispute.

3. In written statement, respondent Nos. 1 and 2 took up a positive stand that the land, in dispute is part and parcel of the land meant for Government Polytechnic (Women), Sirsa, and is the ownership of the Government. Possession of the appellants, over the land, in dispute, was admitted, though, it was termed as unauthorised. It was further stated that appellants (plaintiffs) shall be dispossessed from the suit land, in due course of law. It was prayed that suit, having no substance, be dismissed.

4. Before this Court, it has vehemently been contended by Shri Verma, appearing for the appellants, that both the Courts below have committed an error of jurisdiction, by not discussing any of the documents, brought on record by both the parties. By referring to contents of judgments and decrees of the Courts below, counsel contended that to prove their adverse possession, appellants had brought on record as many as 37 documents. None of those documents was considered by the Courts below, as such, judgments and decrees passed, were vitiated and deserve to be set aside. Counsel further contended that it has been proved on record that the appellants were in settled possession of the property, in dispute. They have constructed their houses and were provided basic civil amenities by the Municipal Committee and other government departments, as such, they cannot be dispossessed, except otherwise in due course of law. Both the courts below have erred while declining relief of permanent injunction to them. To support his contention, he has placed reliance upon judgments of Hon"ble the Supreme Court in State of Haryana v. Mohinder Pal and Ors. 2002 (2) P.L.R. 170, and Rame Gowda (D) Lrs. v. Mr. Varadappa Naidu (D) by Lrs. and Anr. 2004(1) R.C.R. (Civil) 519 (S.C.). He prayed that appeal be allowed and judgments and decrees under challenge be set aside.

5. Prayer made, has vehemently been opposed by counsel, appearing for respondent Nos. 1 and 2. He submitted that the appellants are trespassers over the government land, had failed to prove ownership, on the basis of their adverse possession, as claimed by them. As such, they were rightly not granted any injunction. He prayed that the appeal be dismissed.

6. It is apparent from the record that possession of the appellants, over the property, in dispute, is admitted. Appellants are claiming ownership, on the basis of their possession being adverse to respondent Nos. 1 and 2. To prove their ownership, they have brought on record copies of jamabandis and khasra girdawaris, to prove that they are sitting over the property, in dispute, for the last more than 30 years. It is also an admitted fact that the Courts below have not discussed documents, produced by the parties, in detail. Be that as it may, at the time of arguments, Shri Verma was asked to show any document to prove that the appellants were in possession of the property in dispute for the last more than 30 years and their possession has ripened into ownership. Shri Verma, from his possession, has shown to this Court an oldest document, even that document relates to the year 1968. Present suit was filed in the year 1995. As

such, even during arguments, before this Court, appellants have failed to show that they had become owners on the basis of their adverse possession, as the documents brought on record, have failed to fulfill the conditions to claim such ownership. Accordingly, claim of the appellants regarding ownership stands rejected.

7. So, far as the possession of the appellants over the property, in dispute, is concerned, it was admitted throughout. Respondent Nos. 1 and 2 have tried to refute their claim for grant of permanent injunction by stating that since they are trespassers, they are not entitled to any such relief.

8. Appellate Court below, after noticing evidence on record, has observed thus:

"10. It is well propounded law that the possession over the public property by any individual or group of individuals is no possession in the eyes of law. Such persons cannot claim any right whatsoever on the basis of unlawful occupation over the public property. The Courts of law are bound to act as a Guardian of the public property and the encroachers should not be given protection of law. The unauthorised possession is a criminal trespass and the Civil Courts should not protect these types of persons. The learned Government Pleader has relied upon 1993 L.J.R. 24 (P&H) Parmod Kumar v. Nandu and Ors., 1995 P.L.R. 48 Mohan Lal v. Mohan Singh. Admittedly, the appellants have not taken the permissive possession and they are nowhere recorded to be in possession of the suit land in the revenue record. Only one appellant namely Jangir Singh is recorded to be in an unauthorised possession of a small portion of the suit land measuring 7 kanals 2 marlas and that too since 1980-81. His possession over this part of the suit land has also not ripened into the ownership. The appellants have also not disclosed the fate of the previous litigation which was decided vide judgment dated 7.8.1998, Ex.D-1. In fact the Civil suit for permanent injunction filed by the appellants with regard to the suit land has already been dismissed and the respondents are taking the possession of the suit land in due course of law. The appellants have failed to show that the respondents being real owners knew that the possession adverse to their title has been taken. In fact in order to establish the adverse possession of the appellants were required to establish that their possession is actually uninterrupted, open, notorious, hostile, exclusive and under a claim of right for the statutory period. If any of these elements is lacking, title by way of adverse possession can not ripened. The mere fact that the appellants are retaining the possession does not indicate any hostility on their part to the claim of the responsible (respondent?) as owners. Even otherwise the revenue entries do not support the possession of the appellants over the suit land. The learned lower Court has rightly discussed the law and facts and there is no hesitation in upholding the findings given by the learned lower Court."

9. This Court is of the opinion that non-grant of permanent injunction to the appellants, by the courts below, was not justified. As is apparent from the passage extracted above, from the judgment of the appellate Court below, relief

of injunction was declined to the appellants, merely on the ground that they were the trespassers over the government land. In their plaint, it has specifically been stated by the appellants that they are in established possession of the property, in dispute and they have constructed their houses, to which sewerage, water supply and electricity etc. have been provided by the Government officials. It has further been stated that they are in established possession of the property, in dispute and some of them have raised houses even by raising loan from Banks. In written statement, reply is elusive, so far as construction of houses and providing of civil amenities are concerned. Possession of the appellants is admitted. Even in para No. 7 of the written statement, it has been stated that they have been dispossessed from the suit land, in due course of law. Appellants have also brought on record copy of notice issued to them by the municipal authorities, demanding house tax and also receipts, regarding payment of amount to electricity department. This Court is of the view that the plaintiffs were successful in proving on record that they are in established possession of the property. Under these circumstances, even government cannot be permitted to evict them except otherwise in due course of law. This view has been upheld by their Lordships of Supreme Court in Mohinder Pal's case (supra). Similarly, in Rame Gowda 's case (supra), their Lordships of the Supreme Court had observed 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 (protect ?) such possession he may even use the reasonable force to keep out a trespasser. A rightfully 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 injunctioning 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."

10. Facts of the present case clearly demonstrate that possession of the appellants over the property, in dispute, for over a sufficient long period, has been proved on record. Ours is a system, where rule of law prevails. Even

government cannot be permitted to take law in its hands. In their written statement, respondent Nos. 1 and 2 have specifically stated that possession will be obtained from the appellants, in due process of law. It is expected that they shall follow the statement made by them in their written statement. In view of evidence on record, appellants are successful to prove that they are entitled to grant of injunction restraining the respondents not to dispossess them except otherwise in due process of law. Accordingly, this appeal is partly allowed. Claim of the appellants, regarding ownership, on the basis of their adverse possession, stands declined. However, keeping in view of their admitted long possession, they are held entitled to grant of decree of permanent injunction, restraining respondent Nos. 1 and 2 to dispossess them except otherwise in due course of law. Decree sheet be prepared accordingly. No order as to costs.