

## RAJASTHAN HIGH COURT

Shetra Pal

Vs.

Smt. Renu

Civil Misc. Appeal No. 519 of 2001

(Prakash Tatia, J.)

15.09.2001

### ORDER

**Prakash Tatia, J**

1. Heard the learned counsel for the appellant and the learned counsel for the respondents.

2. In this case, the trial Court refused the injunction by order dated 11.4.2001 in a suit filed by the appellant-plaintiff. According to the learned counsel for the appellant since appellant is in settled possession of the land in dispute, therefore, he has a right to protect his possession and no one can take law in his own hands to evict him, even a true owner has no right to dispossess him from the land in dispute. According to the learned counsel for the appellant, the appellant-plaintiff was in possession when the land in dispute was recorded in the name of one Shri Bhura Ram. The title to the land vesting in Bhura Ram is not in dispute and, therefore, when the plaintiff was in possession for about 20 years then his settled possession cannot be disturbed. Learned counsel for the appellant has submitted that Bhura Ram executed a sale deed dated 20.4.1981 in favour of 76 persons and by this act Bhura Ram transferred his big land including land in dispute also in favour of the purchasers. Despite the above sale deed in favour of above persons the plaintiff remained in possession of the land. The land which is in dispute is said to be marked as Plot No. 29 and the registered title deed is in the name of Chuni Lal executed by the above Bhura Ram. According to the learned Counsel for the appellant, the appellant-plaintiff entered into the agreement (dated 15.3.91) with one Shri Mohan Lal for purchase of this very Plot No. 29 though it was standing in the name of Chuni Lal as owner. Mohan Lal or Chuni Lal did not execute any sale deed in favour of plaintiff and when Chuni Lal tried to sell the land in favour

of other persons the defendants, then the plaintiff resisted that sale by raising the objections and by submitting that plaintiff is in possession of the land in dispute. But the registering authority under the impression that they are required to register the document executed by the seller in favour of the purchasers, registered the sale deed and when the purchasers-registered the sale deed and when the purchasers threatened to dispossess the plaintiff, the plaintiff filed the suit for cancellation of sale deed executed by Chuni Lal in favour of purchasers defendants and sought the relief of injunction. Again learned counsel for the appellant vehemently submitted that the trial Court by impugned order merely dismissed the injunction application of the plaintiff-appellant with respect to Plot No. 29 on the ground that the plaintiff has not having title of the land and the defendants are the title holders, therefore, the Court cannot grant injunction against true owner on the request of the person having no title. However, trial Court granted injunction with respect to the Plot No. 28 for which the defendants have not claimed any right.

3. Learned Counsel for the appellant relied upon the various judgments and submitted that the appellant-plaintiff is entitled to protect his possession by the help of injunction. He placed reliance on the judgment of the Apex Court in *Krishna Ram Mahale (dead) by his L.Rs. v. Mrs. Shobha Venkat Rao*,<sup>1</sup> wherein it has been held by the Apex Court that it is 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. In the aforesaid case, the plaintiff filed the suit for recovery of possession of premises upon which she had entered as a licensee to conduct the business of restaurant and she was subsequently dispossessed by the licensor unlawfully and behind her back, Therefore, the Apex Court held that decree for recovery of possession is the relief for which the plaintiff was entitled. The above judgment was delivered by the Supreme Court in a Special Appeal against the Division Bench judgment of the High Court of Bombay delivered in Regular First Appeal. The trial Court in the above case decreed the suit of the plaintiff and the Bombay High Court dismissed the appeal against that and, therefore, the matter went to the Supreme Court and decision was given by the Apex Court.

4. Learned counsel for the appellant relied on another judgment of the Supreme Court in *Dalpat Kumar v. Prahlad Singh*,<sup>2</sup> and submitted that in this case the Apex Court held that the existence of *prima facie* right and infraction of the enjoyment of the

property should not be confused with the *prima facie* title which has to be established. He further relied on the decision given by the Supreme Court in *Shri Kihota Hollohon v. Mr. Zachilhu*,<sup>3</sup> wherein the Apex Court has held that interlocutory orders are passed to preserve in *status quo* the rights of the parties so that, the proceedings do not become infructuous by any unilateral overt acts by one side or the other during its pendency. Further, the learned counsel for the appellant relied upon the judgment delivered by the Bombay High Court in *Smt. Sarladevi widow of Kundanlal Bandawar, Dharampeth Nagpur v. Shailesh s/o Gourishankar Namdeo, Tilaknagar, Nagpur*,<sup>4</sup> wherein the Bombay High Court has held that person in possession call claim injunction against everyone including rightful owner and rightful owner cannot evict him by force and he has to follow the due process of law.

5. The sum and substance of the arguments of the learned counsel for the appellant is that assuming for argument's sake that the plaintiff appellant has no title in the property even then in view of the law laid down by the Apex Court and followed by the Bombay High Court, the appellant is entitled for injunction but the trial Court wrongly refused it.

6. Learned Counsel for file respondents vehemently submitted that the order passed by the trial Court dated 11.4.2001 is just and proper and the respondents are true owner of the property, therefore, no injunction can be granted in favour of the plaintiff-appellant. He has also submitted that the respondents are in possession of the property and denied the possession of the plaintiff appellant. He further submitted that looking to the conduct of the plaintiff he is not entitled for the equitable relief of injunction and in support of the same, learned counsel for the respondents relied upon the judgment of the Supreme Court in *Premji Ratansey Shah v. Union of India*,<sup>6</sup>, wherein the Apex Court held that injunction would not be issued against the true owner and injunction cannot be issued in favour of a trespasser or a person who unlawful possession as against the owner.

7. To consider the *prima facie* case of the plaintiff, the learned trial Court considered the facts of case which are relevant to be considered by this Court also.

8. This is in admitted fact that Bhura Ram was the original Khatedari tenant and executed a registered sale deed as back as on 20.4.81 that too in favour of 76 persons which included the land in dispute. The above land was measuring 7 Bigha.

Subsequently, the plots were prepared and possession was handed Over to the purchasers as mentioned in the registered sale deed. The handing over of possession of this plot No. 29 is disputed by the plaintiff but there is no allegation of the plaintiff that any fraud was played upon by Bhura Ram by saying in the sale deed that possession of the land is handed over to the purchasers at the time of execution of the sale deed by Bhura Ram in the year 1981. No reason has been given by the learned Counsel for the appellant why the above sale deed was executed by Bhura Rain despite the fact that plaintiff was in possession of the property and why the plaintiff did not raise any voice against the action of Bhura Ram, if he had any right and what was the circumstance in which a wrong fact was mentioned by Bhura Ram in the sale deed. Anyway, it is also admitted fact that Chuni Lal was having a sale deed in his favour even then the plaintiff sated that he entered into agreement with one Mohan Lal that too on 15.3.1991. The reason is best known to the plaintiff why he entered into the agreement to purchase the land in dispute with Mohan Lal when the registered owner was Chuni Lal. Learned Counsel for the appellant tried to explain that Mohan Lal might have oral authority to sell file property in dispute on behalf of Chuni Lal. Assuming for the sake of argument the submission of the learned Counsel for the appellant is taken to be true, then also the agreement is dated 15.3.91 whereas Chuni Lal executed the sale deed in favour of present purchasers-respondents in the year 1998. Admittedly, no sale deed was executed in pursuance of the agreement dated 15.3.91 in favour of plaintiff by Chuni Lal through Mohan Lal or if Mohan Lal had any authority then by Mohan Lal. Admittedly, no suit for specific performance of contract has been filed even till today by the plaintiff against Mohan Lal and Chuni Lal. According to the learned counsel for the appellant only suit for cancellation of the sale deed executed by Chuni Lal in favour of the respondents and consequent relief of injunction has been sought in the present suit. Therefore, it is clear that there is no basis of possession of the plaintiff if his submission that Mohan Lal has oral authority is taken to be true. According to the learned counsel for the appellant the appellant is in actual physical possession of the property in dispute at the time of filing the suit. However he could not point out when and under what circumstances, the plaintiff entered into the land in dispute whether it was with the permission of Bhura Ram or against the wishes of Bhura Ram; if it is so with the permission of Bhura Rain what were the terms and conditions on which he occupied the land in dispute. It is also not worthy believing the oral statement of the plaintiff as it is contrary to the registered document executed as back as on 20.4.81. It is nowhere stated that Bhura Ram had some in motive to defeat any right of the plaintiff and in pursuance of that in motive

he executed the sale deed by wrongly saying that possession was handed over. At this stage *prima facie* facts mentioned in the registered sale deed call be certainly believed.

9. When in the year 1991 agreement was executed by Mohan Lal in favour of plaintiff then also all things could have been explained in the agreement but important fact is that even as per the plaintiff, the plaintiff is seeking title from Chuni Lal through Mohan Lal. The presumption can be drawn of the possession in favour of the true owner in view of the fact of registered sale deed and seeking title from Chuni Lal by the plaintiff. The events can be presumed that title will follow the possession. When the facts with respect to the actual physical possession of plaintiff's entry are not clear in the pleading and cannot be deemed then it cannot be said that person is in possession and his possession is settled possession. To show settled possession one is required to specifically plead the manner in which he entered into the possession. These facts are missing in this case.

10. In the light of the above facts, if the law laid down by the Supreme Court is seen it is clear that the case of Krishna Ram Mahale (*supra*) was a case of recovery of possession by the licensor against the licensee wherein licensee was dispossessed without due process of law and decree for restoration of possession granted by the trial court was upheld by the High Court and also by the Supreme Court and this was not a matter of *ad interim* injunction. The Apex Court held that person is in settled possession, obviously because of the fact that license was as granted by the licensor to other party and it was case of initial lawful entry in the property; and it was held that the true owner has no right to dispossess the person in possession without due process of law. Thus, in a matter of grant of injunction, the considerations are different than the consideration for grant of ultimate relief because of the reason that all equitable relief can be refused on the basis of the conduct of the party but while granting decree if the party establishes its right, title and interest, the Courts are required to grant the relief and ultimately cannot refuse the relief with respect to the title of the property only on the basis of the conduct of the party.

11. As laid down by the Apex Court in Dalpat Kumar (*supra*) there is a difference between *prima facie* case and *prima facie* title and both should not be confused while deciding the application for injunction and that is why what is relevant is the *prima*

*facie* case bolt here in this case also and in the matter of grant of injunction which is equitable relief the conduct of the parties is also to be seen to judge the *prima facie* case which may not be relevant while judging the title of the property and therefore the Court is required to consider the *prima facie* case and conduct.

12. That is different thing that if property is in danger of being wasted or damaged that may give a good reason to preserve the property in the state in which it is but that too is to be seen in the facts and circumstances of each case and blanketely it cannot be followed that in all cases when there is no *prima facie* case and the conduct makes disentitled a person for the relief even then the Court is bound to grant relief in favour of party on the ground that *status quo* is required to be maintained during pendency of the proceedings depriving a rightful true owner from enjoyment of its property which is also a valuable right of the party. In Shri Kihota Hollohon (supra) the question of constitutional provisions regarding disqualification of the the elected member on the ground of defection was under consideration and the Apex Court passed the interim order observing that interim order is to be passed to preserve in *status quo* the rights of the parties so that, the proceedings do not become infructuous. The above judgment has no application to the facts of the case.

13. In Smt. Sarladevi (supra) it was found as a matter of fact that plaintiff was in possession of uninterrupted right from 1965 till 1980, the date of filing of the suit. The Bombay High Court observed that in the facts of the case, the plaintiff could not have asked anything better than this (the injunction) and further observed that she could not have come before the High Court by way of suit for specific performance of the contract against the society and also considered the other possible way of seeking relief from the Court by the plaintiff but it was not found available to the plaintiff. Therefore, the Bombay High Court held that in view of the settled possession, the plaintiff can maintain and seek injunction even against the true owner whereas Apex Court in the judgment delivered in Premji Ratansey Shah (supra) held that it is equally settled law that injunction would not be issued against the true owner and held that Courts below rightly rejected the relief of injunction in favour of petitioner who have no interest in the property even assuming that they had any possession.

14. In totality of the facts of the present case, the conduct of the plaintiff is such that he is not entitled for equitable relief of injunction and he has no *prima facie* case in his

favour in view of the fact that he failed to prove his settled long possession and when there is a person holding the registered sale deed which starts as back as from the year 1981 and subsequent thereto. No balance of convenience lies in favour of plaintiff nor plaintiff is going to suffer any irreparable injury.

15. Before parting it may be stated that the injunctions are granted to protect the possession of the person in possession in view of the fact that *status quo* is to be maintained during pendency of the suit with sole and pious object to see that there should not be lawlessness and none should be permitted to take law in hand nor use force. That proposition equally applies to the persons who occupy the land under an impression that their possession is required to be protected by the Courts of law even it may be having no basis under law and there is no reason to remain in possession then that also will result into giving encouragement to illegal activities of the person in favour of encroaching upon the immovable properties and seeking a seal of the Court for their illegal actions in the form of grant of injunction. Therefore, the above proposition is to be applied looking to the facts of the case and not merely on the basis of the blanket proposition of maintaining *status quo* which may have a consequence of protecting lawlessness but may result in encouraging lawlessness. These persons who by over-reaching the process of law or taking possession of property by use of force or took the possession of the property in such a manner that the true owner cannot come to know the illegal possession of other party then looking to the facts of the case injunction can be refused to person in possession.

16. Here, in this case since the plaintiff has based his suit on the basis of settled possession which he will be free to prove by evidence in his suit and no observation made in this order with respect to the fact will come in is way to prove his case and in case plaintiff succeeds to prove his case, he will naturally be entitled for the ultimate relief in accordance with law but at this stage there is no reason to grant any injunction and when the trial Court refused the injunction after considering the facts of the case. I do not see any reason to interfere with the order and the appeal is dismissed at admission stage. The stay order granted earlier stands vacated.  
Appeal dismissed.

Cases Referred.

1. 1990(1)RCR(Rent) 525 (SC) : AIR 1989 SC 2097

2. 1992(2) RRR 457 (SC) : AIR 1993 SC 276
3. AIR 1993 SC 412
4. AIR 1996 Bom 98
5. 1995(3) RRR 11 (SC) : JT (1994)6 (SC) 585