

# RAJASTHAN HIGH COURT

Bheekam Chand

Vs.

Ismail

Civil S.A. No. 263 of 1993

(Dinesh Maheshwari, J.)

04.08.2005

## JUDGEMENT

**Dinesh Maheshwari, J.**

1. This Second Appeal No. 263/1993 filed by the plaintiff-appellant on 30-11-1993 has now come up for admission after having been dismissed in default and restored thrice over by this Court. This appeal has been submitted against the judgment and decree dated 16-8-1993 passed by the Civil Judge, Ratangarh in Civil Appeal No. 14/1990 whereby the learned Judge dismissed the appeal filed by the plaintiff-appellant against the judgment and decree dated 12-8-1983 passed by the Munsif, Sujangarh dismissing Civil Suit No. 105/1980 (116/1974) filed by the appellant seeking perpetual injunction against the defendants for restraining them from dispossessing him from the suit property.

2. Brief facts relevant for the present purposes are that the plaintiff- appellant filed a suit seeking perpetual injunction against the defendants- respondents on 17-5-1974 on the averments and allegations that the property in question described in para 1 of the plaint was of the ownership and possession of the plaintiff, in which, he was residing for last 14 years as owner and has acquired title by way of adverse possession. The plaintiff has spent substantial amount on the repairs and renovation of the house and about a year back he spent about Rs. 4,000/-. The defendants-respondents were living at *Secunderabad (South Hyderabad)* but were the permanent residents of Ladnu. They have no connection with the house in question but joining conspiracy with one Jhabar Khan-petitioner-writer, and Noor Mohammed-compounder, they were seeking to forcibly dispossess him and were extending threats. Firstly the threat was extended on 12-5-1974 and thereafter false police proceedings were sought to be taken which had

endangered the legal rights of the plaintiff and, therefore, they be restrained by way of perpetual injunction, not to forcibly dispossess him.

3. The defendants-respondents in their written statement denied the rights claimed by the plaintiff and submitted that they were the owners of the house inasmuch as the patta of the house in question was issued in the name of their father Chhotu and uncle Ganpat. After the death of their father, the defendants acquired rights over his share in the house whereas the share of Ganpat was succeeded by Suleman, who sold his share under a registered sale- deed dated 11-3-1970 to the defendants and since then they were in possession of the entire house as owners. When the defendants were required to move out with families in relation to their business, in one portion they kept their belongings and rest of the house was let out to Noor Mohammed s/o Didar Bux on 9-11-1971 on a rent of Rs. 25/- per month. It was alleged that Noor Mohammed sublet the property to the plaintiff on Deepawali of the year 1973 and since then only the plaintiff was in possession of the house. This fact came to the notice of the defendants in May, 1974 on their visiting Sujangarh. Noor Mohammed was asked to deliver possession of the property and to pay the due rent, but he failed to comply and, therefore, a suit was filed for recovery of rent and eviction which was decreed on 27-11-1974. The defendants asserted that they never attempted to forcibly dispossess the plaintiff. It was also alleged that when the plaintiff has sought the decree for perpetual injunction on the basis of adverse possession, then, until a declaration about the ownership was obtained, injunction could not be issued.

4. Upon pleadings of the parties, the trial Court framed five contentious issues. The parties led the oral evidence and also produced documentary evidence. It may also be noticed that before the learned trial Court an application was moved by the plaintiff on 9-8-1983 seeking amendment in the plaint when the case was fixed for final arguments. It was sought to be incorporated in the plaint by way of amendment that the defendants filed a Suit No. 147/1974 in the Court of Munsif, Ratangarh for ejectment against Noor Mohammed and a collusive decree was obtained on 27-11-1974 and on that basis execution was levied against Noor Mohammed and then against the plaintiff also. The plaintiff upon getting the knowledge about the said decree, has filed a suit for cancellation of the decree in the Court of Civil Judge, Churu in the year 1981 in which the present defendants and Noor Mohammed have already been served and were taking part in the proceedings and the said suit was in relation to the present disputed suit property only.

5. The learned Munsif, Sujangarh dealing with the suit rejected the said application for amendment both on the ground of want of due diligence and so also on the ground that the amendment did not appear to be relevant for this suit for injunction. It appears from the order sheet dated 9-8-1983 that the learned Munsif also took note of the fact that the case was pending since long for final arguments and had been adjourned twice over on costs of Rs. 50/- each. However, the plaintiff still sought time and pointed out that new lawyer engaged by him has refused the Pairvi. The Court did not find any justification for adjourning the case and heard the arguments of the counsel for defendants and the plaintiff expressed that he would submit written arguments later, although no such written arguments were submitted.

6. The learned Munsif proceeded to decide the issues involved in the case by the judgment dated 12-8-1983. Issue Nos. 4 and 5 relating to the suit valuation and the court- fees had already been decided in favor of the plaintiff. Issue No. 3 was framed on the question as to whether the plaintiff was not entitled to the relief of perpetual injunction without getting declaration of his ownership rights ? The learned Munsif observed on this issue No. 3 that unless it was decided that the plaintiff has perfected his title by way of adverse possession, there does not appear to be any justification for issuing perpetual injunction in his favor against the defendants.

7. Issue No. 1 was framed on the question as to whether adverse possession of the plaintiff was continuing for 14 years and he has become owner of the property ? The learned Munsif although observed with reference to the frame of the suit that in this suit for injunction simpliciter, such issue could not be decided, yet took up the issue for consideration and observed that the plaintiff has failed to show as to how he acquired possession of the suit property. Although he has stated that the disputed house was given to him by one Kanhaiyalal for residence, but no facts regarding Kanhaiyalal were pleaded in the plaint nor the plaintiff could show as to when Kanhaiyalal constructed this house and when gave it to him ? It was also not shown as to how Kanhaiyalal handed over the house without consideration to the plaintiff without any document ? The plaintiff did not examine the son of Kanhaiyalal although his sons Phoolchand and Ghewar were admitted to be alive and residing at Sujangarh only. The plaintiff has asserted that he had permitted putting up of almira by Allahbux and Jhabar in the suit property but both of them were examined on behalf of the defendants and deposed to the effect that they were the tenants of the defendants.

After considering the evidence led by the plaintiff and so also the want of relevant evidence on his part, the learned Munsif also examined the evidence led on behalf of the defendants about the patta of the house, about transfer of = share by Suleman to them and about the persons inducted as tenants by them in the disputed house including Noor Mohammed DW-10 who admitted that he took the house on rent from the defendants at a rent of Rs. 25/- per month and then without permission of the defendants sublet the same to the plaintiff. The house tax lists Ex. 10 to 12 recorded the defendant- Ismail as the owner of the house. After considering the record, the learned Munsif came to the specific conclusion that the possession of the plaintiff on the disputed house was only from Deepawali of the year 1973 upon subletting by Noor Mohammed and the plaintiff was not in adverse possession of the disputed property for 14 years prior to the filing of the suit as claimed.

8. Issue No. 2 was framed on the question as to whether the defendants were seeking to forcibly dispossess the plaintiff and, therefore, the plaintiff was entitled for perpetual injunction? On this issue also, the learned Munsif categorically found that there was no evidence on the part of the plaintiff by which it could be believed that the defendants were seeking to forcibly dispossess him. The suit was not maintainable in its form nor the plaintiff has approached the Court with clean hands and was not entitled for any injunction. The suit was, therefore, dismissed.

9. In appeal, the learned Civil Judge, Ratangarh considered independently the entire case and after thorough analysis of entire oral and documentary evidence endorsed and affirmed the findings of the learned trial Court. The learned Appellate Judge found that the application seeking amendment was rightly refused and that the present suit for injunction simpliciter was not maintainable and that the plaintiff was in possession of the suit property from Deepawali of the year 1973 only and has not acquired any right by adverse possession. The learned Appellate Judge also found that there was no circumstance available on record to believe that the plaintiff was attempted to be forcibly dispossessed but on the contrary he was being dispossessed under the provisions of the Rent Control Law being a sub-tenant. The plaintiff was found to have not approached the Courts with clean hands. The appeal was, therefore, dismissed and the dismissal of the suit was upheld. Hence this second appeal by the plaintiff.

10. As noticed above, this appeal from a suit for injunction against an alleged threat of illegal dispossession has remained pending for last about 12 years for admission only.

The learned counsel for the appellant contended that in the facts and circumstances of this case when the plaintiff was in possession of the suit property, an injunction at least to the extent that he be not dispossessed without due process of law ought to have been granted and, therefore, submitted that the substantial question of law to that effect does arise for consideration in this case. The learned counsel referred to and relied upon the decisions in *Karthiyayani Amma v. Govindan*,<sup>1</sup> *Sadhu Ram v. Gram Panchayat, Pastana*,<sup>2</sup> *Smt. Sarladevi v. Shailesh*,<sup>3</sup> and *Rame Gowda v. M. Veradappa Naidu*,<sup>4</sup>

11. Having heard the learned counsel for the appellant and having perused the entire record, this Court is clearly of opinion that this appeal is totally groundless and no substantial question of law is involved in this case.

12. It is apparent from the summary of the findings reached by the two Courts below as narrated hereinabove that the Courts below have concurrently found that the defendants were the owners of the suit property and the plaintiff was in its possession only as a sub-lettee having been inducted by the tenant-Noor Mohammed and the plaintiff was sought to be dispossessed under the decree for ejectment obtained by the defendants against the tenant-Noor Mohammed. It has also been recorded as a finding of fact by the Courts below that the plaintiff came in possession of the suit property only on Deepawali of the year 1973 and was not in possession of the suit property for the prescriptive period so as to countenance his allegation of having acquired a title by way of adverse possession. Moreover, it has also been concurrently found by the two Courts below that the plaintiff has not been able to establish that any threat of forcible dispossession was extended to him by the defendants.

13. A comprehensive look at the findings on the essential facts makes it apparent that the case of the plaintiff is lacking in all the ingredients fundamentally necessary for issuance of an injunction in his favor against the defendants. Defendants are the owners of the property, plaintiff is only a sub-lettee inducted on Deepawali of the year 1973 only; defendants have a decree dated 27-11-1974 for ejectment against tenant-Noor Mohammed; and above all it has been found that there was no threat of forcible or unlawful dispossession but the defendants were seeking to recover possession under the decree of the Court.

14. The plaintiff has failed to prove his settled possession and has failed to prove existence of any obligation in his favor which was threatened to be invaded unlawfully. No injunction could have been granted in his favor.

15. The decisions of the Hon'ble High Courts of Kerala, Punjab and Haryana, and Bombay sought to be relied upon by the learned counsel for the appellant dealing with injunction against forcible dispossession have no application whatsoever to the facts of the present case where the plaintiff has been found to be a sub-lettee and moreover when he was being sought to be dispossessed not in any unlawful manner but by taking recourse to the law and under a specific decree granted by the competent Court. The claim of issuance of an injunction that the appellant be not dispossessed without due process of law does not fit in the fact situation of the present case.

16. In the case of Rame Gowda (supra), the Hon'ble Supreme Court was concerned with a case where either of the parties failed to prove title to the suit property and plaintiff was found to be in settled possession and in such circumstances, issuance of injunction to protect possession was upheld. The Hon'ble Supreme Court held,-

"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."

17. For a claim of injunction without proof of title, the Hon'ble Supreme Court agreed with the observations of Bombay High Court in *Fakirbhai Bhagwandas v. Maganlal Haribhai*,<sup>5</sup> to the effect,-

"It would suffice if he proves that he was in lawful possession of the same and that his possession was invaded or threatened to be invaded by a person who has no title thereof."

18. In the present case, the defendants have been found to be the title holders and the plaintiff to be a sub-lettee who is sought to be evicted under a decree granted by the Court. With these findings, the claim of perpetual injunction in the present case was bound to fail and has rightly been rejected.

19. The appellant has sought a relief of injunction only and that being an equitable relief, he cannot be held entitled to protect the possession by way of injunction simpliciter against the rightful owner and such relief cannot be granted for mere askance. As the Hon'ble Supreme Court in the case of *Premjit Ratansey Shah v. Union of India* <sup>6</sup> has laid down,-

"Issuance of an order of injunction is absolutely a discretionary and equitable relief. In a given set of facts, injunction may be given to protect the possession of the owner or person in lawful possession. It is not mandatory that for mere asking such relief should be given. Injunction is a personal right under Section 41(j) of the Specific Relief Act, 1963; the plaintiff must have personal interest in the matter. The interest of right not shown to be in existence, cannot be protected by injunction."

20. Therefore, it is not necessary that merely on account of possession, the plaintiff would be entitled for an injunction.

21. The learned Courts below have refused the discretionary relief of injunction on valid and relevant considerations. This Court is satisfied that the suit has rightly been dismissed by the learned Munsif and the dismissal has rightly been upheld by the first Appellate Court and the present second appeal remains totally devoid of substance and the case involves no substantial question of law.

22. The appeal is, therefore, dismissed.

Appeal dismissed.

Cases Referred.

1. AIR 1980 Ker 224
2. AIR 1984 Punjab and Haryana 262
3. AIR 1996 Bom 98
4. 2004 AIR SCW 4205
5. AIR 1951 Bom 380
6. (1994) 5 SCC 547

