

Before R.P. Nagrath, J

ARUNJIT KAUR AND OTHERS — Appellants

versus

JALANDHAR IMPROVEMENT TRUST— Respondents

RSA No. 2208 of 2011

October 28, 2014

Code of Civil Procedure 1908—Second Appeal—Section 100— Temporary injunction — Order XXXIX — Practice and Procedure — Abuse of process of Court —Land-grabber misusing the process of court to legalise illegal possession— Litigation 17 years old — Issue whether plaintiff entitled to injunction qua property over which he claimed possession — Entire evidence to support possession over property belonging to a public body created after institution of the suit — No documentary proof to support ownership — Entire record relied upon by the Plaintiff-Appellant manipulated during pendency of the suit to justify illegal possession — Property in question part of 110-acre scheme of Improvement Trust — Elaborate and meticulous analysis of evidence by the Trial Court while declining injunction — Discretionary relief of injunction rightly declined —Trust allowed to remove appellant from the property in dispute even by use of force.

Held, that so the entire record relied upon by the appellant was manipulated during pendency of the suit to justify their illegal possession which indicates the misuse of the process of Court in claiming possession.

(Para 25)

Further held, that when the appellant has come up with such a inconsistent case which is on the face of it is based on manipulated record, the discretionary relief of injunction to such a plaintiff has been rightly refused as the appellants are proved to be the land grabber/usurpers.

(Para 27)

Further held that it is not a case where there was dispute about the boundaries but a big chunk of land comprising 110 acres scheme of Improvement Trust is involved and as per site plan, Ex. D7, the area under encroachment is shown in yellow colour in the plan. This plan is prepared on the basis of voluminous record of Improvement Trust

showing the chunk of land which is acquired. Ex. D-6 is the lay out plan of the development scheme of 110 acres scheme carving out different plots. It is very painful to note that righter allottees/purchasers of plots have been deprived of their right for a number of years.

(Para 28)

Further held, that learned senior counsel for the appellants submitted that even a trespasser in a peaceful possession is entitled to protection of law and relied upon *Rame Cowda (D) by Lrs vs. Mr. Varadappa Naidu (D) by Lrs and another*, 2004 (1) SCC 769, in support of his case. That was a case where the possession of the property was mainly the matter in question. Plaintiff in the said suit had failed to prove his title but it was also found that defendant also failed to prove his title over the disputed property. In the instant case the plaintiff can by no stretch be held in settled possession of the property, as the claim was based on documents manipulated during pendency of the suit and the plaintiff is found to be a land grabber trying to usurp the property belonging to a public body.

(Para 31)

Further held, that before parting with this judgment, it deserves to be noted that the civil suit filed by the Improvement Trust No. 148 of 1997 for recovery of the mesne profits was adjourned sine-die because of the pendency of instant case. The District Judge, Jalandhar be asked to direct the trial Court to take up the said civil suit on priority and proceed to decide the same expeditiously and preferably within a period of one year on receipt of copy of this judgment. With regard to observations of this Court while deciding the instant RSA where the relief of injunction has been refused, the Improvement Trust is well within its right and can remove the appellants from the property in dispute even by use of force.

(Para 34)

Kanwaljit Singh, Senior Advocate with Vikram Gupta,
Advocate, *for the appellants*.

Sandeep Khunger, Advocate for respondent No. 1.

None for respondent No. 2.

R.P. NAGRATH, J.

(1) The facts of instant case reveal total misuse of process of Court which enabled the appellants to occupy the property, lawfully

acquired by Jalandhar Improvement Trust-respondent no.1. Award in respect of the acquired land was passed by the Land Acquisition Collector (LAC) and possession taken in the year 1981. It has also appeared on record that consistent attempts were made to manipulate the evidence, during pendency of the suit for showing possession of the land with the appellants. The facts would further reveal that the instant is a case of a land grabber trying to misuse the process of the Court and seek protection of illegal possession for which the litigation went on for 17 years in the trial Court.

(2) The suit was originally filed on 28.02.1990 by M/s Bawa Building Materials through its proprietor Gursharan Singh in respect of the small portion of the constructed property measuring about 5½ marlas bounded on the east: opposite property of the Municipal Corporation park and road; and on west, north and south vacant plots as shown in the site plan Ex. P1, upon which Gursharan Singh himself relied when he was alive by appearing in the witness-box as PW-1 in support of his case.

(3) When the suit was entertained on 01.03.1990, the appellant had also applied for the grant of temporary injunction. The trial Court while issuing status-quo with regard to construction to be maintained till further orders also appointed Sh. Ranjit Singh, Advocate as Local Commissioner to visit the spot and report regarding the factual position of construction, if any. The Local Commissioner submitted the report dated 31.03.1990, by inspecting the spot on 02.3.1990 at 04.30 p.m., after notice to counsel for the plaintiff whose presence was marked on a separate sheet. It was found by the Local Commissioner that a room made of pacca bricks 8'x9'-9" in outer measurement with cement sheets roofing existed at the spot. There was a door of about 3 ft. on the eastern wall which was found open. The room was vacant. It was existing at a distance of 20 ft. from the end of the pacca road which leads from Guru Teg Bagadur towards Mithapur Octroi post. Inside portion of the room was not whitewashed whereas it was whitewashed on the outer side. In between the constructed room and the road there were stacks of bricks and also a big heap of sand. The allegation in the plaint was that the plaintiff was in possession of the property for the past about 2 years.

(4) The appellant-plaintiff then got his plaint amended. It is stated in the amended plaint dated 29.11.1996/22.08.1998, that the property in possession of the plaintiff measures 121'x43 ½' being constructed portion comprising of one room, bathroom, kitchen, dining room, open

store, lobby and in addition thereto there was uncovered area measuring 108'x20', as per site plan Ex. P1/A dated 18.09.1996. This property was statedly bearing no. 72-A and 76-A as per site plan and there was averment now in the plaint that the property was in possession of the plaintiff for the past more than 25 years. Gursharan Singh-plaintiff had died during pendency of the suit, and legal heirs were brought on record. The trial Court dismissed the suit and appeal filed against the judgment of the trial Court was also dismissed by the lower appellate court. The instant appeal was filed by the legal heirs of Gursharan Singh and appellant no. 1-Arunjit Kaur wife is of late Gursharan Singh.

(5) Learned senior counsel for the appellants fairly conceded that the instant appeal is confined only to the covered area of the property measuring 121'x43 ½' and the instant appeal qua uncovered area measuring 108'x20' stood declined when the notice of motion was issued by this Court on 18.05.2011. It is in respect of covered portion of the disputed property that a suit for mandatory injunction was filed by the Jalandhar Improvement Trust against the plaintiff and also for recovery of mesne profits of the aforesaid area @ ₹10,000/- per month w.e.f. March, 1990. Learned senior counsel for the appellant handed over the copy of plaint in Civil Suit No.148 of 1997 instituted on 07.07.1997 by the Improvement Trust, which was adjourned sine-die in view of pendency of the instant RSA.

(6) In the original plaint instituted in the year 1990, there was no averment as to who was the owner of the disputed land as the claim was made only for permanent injunction based on the possession. With the successive amendment it was ultimately contended by the appellants that the property in question belongs to Rehabilitation Department.

(7) The version of respondents in the written statement was that initially appellants claimed possession over the land measuring 5½ marlas comprising one room and to the same effect there is report of Local Commissioner dated 31.03.1990. The amended suit was in respect of 25 marlas of the area. The plaintiff had not filed objections to the report of Local Commissioner.

(8) It was stated that the disputed property falls within 110 acre scheme of defendant-respondent no. 1 and the property vests with the respondents. The structure originally standing in the land does not belong to appellants but it existed before acquisition proceedings were started.

(9) Municipal Corporation-Respondent No.2 pleaded that whatever construction has been raised it was without obtaining sanction from the Municipal Corporation. It was stated that respondent no. 2 is duty bound to remove the construction(s) which has(have) been raised in an illegal and unauthorized manner. It was also reiterated that disputed property falls in 110 acre scheme of respondent no. 1 and further that the same was handed over to Municipal Corporation for maintenance. In the original written statement dated 12.03.1990, defendant-respondent no. 1 had pleaded that the plaintiff has occupied the room which was existing just about a month before filing of the suit. The property in question forms part of *khasra* Nos. 3568 and 3569, which are part of 110 acre scheme of the defendant.

(10) The plaintiff also filed replication.

(11) Following issues were framed by the trial Court from pleadings of the parties:-

1. Whether the plaintiff is not a legal entity and as such, suit as framed is not maintainable? OPD
2. Whether the plaintiff has no locus standi to file the present suit? OPD
3. Whether the plaintiff is entitled to the injunction as prayed for? OPP
4. Relief.

(12) The main contesting point was whether the plaintiff was entitled to injunction prayed for and that was merely on the allegation of holding possession over the suit property.

(13) I have heard learned senior counsel for the appellants, counsel for respondent no. 1 and carefully perused the judgments passed by the Courts below and records.

(14) Learned counsel for the appellants has proposed the following substantial questions of law:-

- (a) Whether in an injunction suit possession is the only consideration?
- (b) Whether the suit of appellants-plaintiffs can be dismissed after admission of the possession by the defendants and on account of pendency of the suit by the defendants against the appellants?

- (c) Whether the judgment and decrees of the court are bad arbitrary and are to be reversed?
- (d) Whether the appellants-plaintiffs having filed the application as per the policy of the Government to get the ownership rights being in long possession of the property can be deprived of the possession in such an illegal, unlawful, arbitrary manner?
- (e) Whether there is any material concealment enough to deny and deprive the appellants?
- (f) Whether the appellate Court is enjoined to decide all issues on merits after considering the evidence and law being the last Court on facts of a case?
- (g) Whether the appellate Court has failed in its duty to decide the appeal on merits of the case and the judgment of the appellate court can be said to be perfunctory in nature?
- (h) Whether if amendment was allowed, un-amended plaint can be looked into or not?

(15) The bone of contention of learned senior counsel for the appellants is that when the plaint was ordered to be amended the matter was supposed to be decided on amended pleadings and the Court cannot fall back to the original plaint. I am of the view that in the circumstances of the case the above contention cannot be sustained. The evidence produced on record, on the basis of original plaint, cannot be completely ignored. Gursharan Singh the original plaintiff when stepped into the witness-box as PW-1 did not utter a word to state that he is in possession of the disputed property for more than 25 years. He rather relied upon site plan, Ex. P1, which was originally filed with the plaint and the disputed property comprised of only a constructed room with an area measuring about 5½ marlas. It is pertinent to note that dimensions of the constructed property was not even mentioned in the site plan, Ex. P1, dated 28.02.1990. After amendment of the pleadings, Arunjit Kaur wife of late Gursharan Singh appeared in the witness-box as PW-6 and she not only relied upon fresh site plan Ex. P1/A dated 18.09.1996 but also tendered the original plan Ex. P1, comprising of one constructed room, in her affidavit, Ex. PW-6/A.

(16) The entire evidence for supporting possession was created after institution of the suit, which bring out a clear case of manipulation in order to lay claim over the property belonging to a public body.

(17) The appellants examined Jaswinder Singh Bhatia (numbered as PW-1), Inspector in the Food and Supplies Department who proved the documents Ex. P1 to Ex. P4. PW-2 Umang Sharma, Sales Clerk from the office of Tehsildar Sales-cum-Managing Officer of the Rehabilitation Department tendered documents Ex. P-10 and Ex. P-11, PW-3 Rikhi Ram Verma from BSNL with documents Ex. P-5 to Ex. P-9, PW-4, the official from the Municipal Corporation alongwith documents Ex. P12 to Ex. P14, relating to deposit of water and sewerage charges and PW-5 Gurdev Singh, an official from the Electricity Board who proved the documents Ex. P15 to Ex. P23.

(18) Ex. P1, the application for obtaining ration card which does not bear date of making application, but the age of Gursharan Singh in this document is mentioned as 36 years. Gursharan Singh was examined on 27.07.1993 as PW-1 when he stated his age as 37 years. This would suggest that this application, Ex.P1, was filed during pendency of the suit. Gursharan Singh PW-1 in cross-examination took a contradictory stand by stating that he is owner of the property in dispute. However, he could not bring any documentary proof in support of his ownership. He could not deny the suggestion that the property in question is part of 110 acre scheme of the Improvement Trust. He also admitted that he did not obtain any sanction of the building plan to raise any construction. He even could not say that disputed property forms part of *khasra* nos. 3568 and 3569.

(19) Ex. P10 is the entry dated 04.10.2001 of a register maintained in the office of Tehsildar Sales-cum-Managing Officer, in which claim was made for allotment on the basis of previous possession in respect of 56 marlas of the property with dimensions as 229 ½' x 63½'. Ex. P5 to Ex. P8 are the documents of telephone department regarding bills/receipts of deposit of bills. These are of the year 1995 to 1997 and 2004.

(20) The document brought on record by PW-4 are Ex. P12 to Ex. P14. Ex. P12 is entry of the register dated 30.03.1992 and bills of the water charges are of the year 2003 and 2001.

(21) PW-5 from the Electricity Department has proved documents Ex. P15 to Ex. P23 which are of the period much subsequent to filing of the suit. Ex. P15 is entry in the register dated 19.04.1991, Ex. P16

dated 14.03.1997 and rest are the bills and receipts of deposit of charges for the subsequent years.

(22) Arunjit Kaur-appellant no. 1 as PW-6 tendered certain documents including application showing that entry was made in record on 04.10.2001 with regard to allotment of land on the basis of possession with an area of 229 ½' x 63 ½' but it is not the case of appelleants that any allotment was made to them on the basis of possession as Rehabilitation Department is not at all in Picture.

(23) Apart from other evidence, the most important evidence came from DW-3 Ashwani Kumar, Section Officer (JE) of the Improvement Trust. He has tendered his affidavit, Ex. DW-3/A. It is stated in the affidavit by DW-3 that as per the site inspection and perusal of documents Ex. D2 to Ex. D6, the plaintiffs have encroached the land of the Improvement Trust and are in illegal possession of the property marked by letters in Ex. D7 which comprises of parts of plots no. 814 to 817 and entire 818 alongwith parking space and part of street shown in blue colour in site plan Ex. D7 which are part and parcel of *khasra* nos. 3568, 3569 and 3570 falling within 110 acres scheme of the Improvement Trust. In cross-examination, DW-3 denied the suggestion that Ex. D7, is false and fabricated document. Ex. D7 is signed by DW-3. He further denied the suggestion that property in question does not form part of plots no. 814 to 818.

(24) The award Ex. D3 was passed by the Land Acquisition Collector in respect of the land acquisition proceedings and the award also include *khasra* nos. 3568, 3569 and 3570. The award is dated 18.10.1976. Alongwith this award the reports of taking possession of the property which was acquired by the Improvement Trust are also attached.

(25) So the entire record relied upon by the appellant was manipulated during pendency of the suit to justify their illegal possession which indicates the misuse of the process of Court in claiming possession.

(26) There was meticulous analysis of evidence led by the parties in the elaborate judgment passed by the trial Court and the lower appellate court. Learned lower appellate court observed as under:-

“12. No doubt the law is also well settled that even a trespasser cannot be evicted except in due course of law. Further it is settled law that the discretionary relief of injunction can be granted only if the plaintiff comes to the Court with clean

hands In this case, plaintiff Gursharan Singh appeared into the witness box as PW1 and while being cross-examined, he stated in clear terms that he is the owner of the property but he further stated that he cannot produce any document of ownership regarding the suit property which is beyond pleadings and facts of the case. The plaintiff has pleaded in the amended plaint itself that property in question belongs to the Rehabilitation Department. So, the evidence of the plaintiff is contradictory to his own pleadings. Whereas PW6 Arjunjit Kaur widow of Gursharan Singh has stated that the property has been constructed by her husband and they are enjoying possession of the premises for the last 25 years, whereas earlier when the suit was filed, it was specifically stated that they are in possession for the last two years, though subsequently the stand was changed and the law is well settled that amended plaint is to be considered. PW2 Umang Sharma has proved ration card, which is issued in the name of Gursharan Singh and this witness was appointed in the department in December, 2002. PW3 Rikhi Ram Verma has proved telephone bills Ex. P5 to Ex. P9 but all these bills are subsequent to the year 1990, whereas the suit was filed on 28.02.1990 and the stand in the amended plaint and in the evidence of Arunjit Kaur widow of Gursharan Singh that they are in possession of 25 years is not supported by bills also, whereas PW4 Rajneesh Kumar has proved entries of water connection and proved documents Ex. P12 to Ex. P14 but these documents are not 25 years old and similarly, PW5 Gurdev Singh, UDC, PSEB has proved bills Ex. P15 to Ex. P23, which are also subsequent to the year 1990. So the contention of the defendant that they have encroached upon the land thereafter and documents were manipulated has much force as the case of the appellant is not supported by documentary evidence that they are in possession for the last 25 years. PW1 Gursharan Singh plaintiff in his statement himself has stated that he is owner, which is also beyond pleadings, whereas the property (allegedly) belongs to Rehabilitation Department as per his own averments. As the plaintiff/appellants have not come to the court with clean hands, they are not entitled to discretionary relief of injunction. Plaintiff/appellant has suppressed true facts from the court while seeking the relief of injunction and in this context, I am fortified by the pronouncements in case titled as **Balwant**

Singh versus Jagdish Singh and others, 2010 (4) Civil Court Cases 551 (SC), wherein it has been held that a person seeking aid of court for exercising its discretionary power is expected to state correct facts and not to state lies before the Court and further in case titled as ***Yalala Swapna versus Petroleum Corporation Ltd., Mumbai and another, 2010 (4) Civil Court Cases 480 (AP)***, it was held that a person who conceals/suppresses any material facts within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence, which has bearing on the adjudication of the issue raised in the case, is not entitled to any relief, interim or final. Hence, this Court comes to the conclusion that the plaintiff appellant has not come to the court with clean hands and has suppressed true facts from the court. Hence no interference is called for in the judgment passed by the ld. lower court and the findings of the ld. lower court are upheld and affirmed.”

(27) When the appellant has come up with such a inconsistent case which is on the face of it is based on manipulated record, the discretionary relief of injunction to such a plaintiff has been rightly refused as the appellants are proved to be the land grabber/usurpers.

(28) It is not a case where there was dispute about the boundaries but a big chunk of land comprising 110 acres scheme of Improvement Trust is involved and as per site plan, Ex. D7, the area under encroachment is shown in yellow colour in the plan. This plan is prepared on the basis of voluminous record of Improvement Trust showing the chunk of land which is acquired. Ex. D-6 is the lay out plan of the development scheme of 110 acres scheme carving out different plots. It is very painful to note that righter allottees/purchasers of plots have been deprived of their right for a number of years.

(29) Under the circumstances, it was for the appellants to bring on record the evidence that the disputed property did not form part of aforesaid *khasra* numbers or that it was not covered in the land that was acquired by the Improvement Trust in 110 acres scheme.

(30) Learned senior counsel for the appellants vehemently contended that when the Improvement Trust itself filed a suit for mandatory injunction in the year 1997, it amounts to admission of the possession of the appellant. I find that the Improvement Trust was bound to institute a suit for at least recovery of mesne profits with effect from the date the appellants remained in illegal occupation of the

property and secured it by way of an *ad interim* injunction. Though as an abundant caution the relief of mandatory injunction was sought which the Improvement Trust was not required at all as such a person(s) trying to grab the public property must be thrown out of the property by use of force.

(31) Learned senior counsel for the appellants submitted that even a trespasser in a peaceful possession is entitled to protection of law and relied upon ***Rame Cowda (D) by Lrs vs. Mr. Varadappa Naidu (D) by Lrs and another***,¹ in support of his case. That was a case where the possession of the property was mainly the matter in question. Plaintiff in the said suit had failed to prove his title but it was also found that defendant also failed to prove his title over the disputed property. In the instant case the plaintiff can by no stretch be held in settled possession of the property, as the claim was based on documents manipulated during pendency of the suit and the plaintiff is found to be a land grabber trying to usurp the property belonging to a public body.

(32) In ***Puran and others versus State of Haryana and others***,² the appellant had filed the suit for injunction against State of Haryana and others. This Court noticed that the appellate court recorded a positive finding of fact that the land belongs to the State and the claim of the appellants that they were in possession could not be accepted merely on the basis of three stray entries in the *khasra girdawari* which were not incorporated in the *jamabandis*. No *jamabandi* showing the possession of the appellants was placed on record. The nature of the land recorded in *jamabandi* was *gair mumkin nadi*. The contention was raised before this Court that even a trespasser is entitled to injunction against the true owner. The plea was rejected as it was observed that in the case referred to on behalf of the appellants that the plaintiff was in settled possession for sufficiently long period which was proved on record.

(33) With the above discussion, I do not find any substantial question of law arising in the case as the Courts below have dealt with the controversy meticulously and elaborately which cannot be said to be in ignorance of any material on record or misreading of the evidence. The instant appeal being without merit is dismissed.

¹ (2004) 1 SCC 769

² 2007 (3) RCR (Civil) 3

(34) Before parting with this judgment, it deserves to be noted that the civil suit filed by the Improvement Trust No. 148 of 1997 for recovery of the mesne profits was adjourned *sine-die* because of the pendency of instant case. The District Judge, Jalandhar be asked to direct the trial Court to take up the said civil suit on priority and proceed to decide the same expeditiously and preferably within a period of one year on receipt of copy of this judgment. With regard to observations of this Court while deciding the instant RSA where the relief of injunction has been refused, the Improvement Trust is well within its right and can remove the appellants from the property in dispute even by use of force.

S. Gupta

Before R .P. Nagrath, J

UDHAM SINGH — *Petitioner*

versus

TEJBIR SINGH AND ANOTHER — *Respondents*

CR No. 324 of 2015

January 14, 2015

Court Fees Act, 1870—Ad valorem fee—Sale deed signed by minor—Signature alleged to be obtained by fraud—Sale deed executed on behalf of minor through guardian on better footing than case of the petitioner—Petitioner to pay court fee under Section 7 (iv) (c) of the Act and not under Article 17 (iii) of the Second Schedule of the Act as claimed since that applies in case of non-executant of sale deed—Petition dismissed.

Held, that learned counsel for the petitioner submits that in the said case the sale deed was executed for the minor through guardian but here is a case where the sale deed purported to be signed by the petitioner. I am of the view that the instance of a sale deed executed through guardian is on a better footing than the present case where the sale deed bears the signatures of the petitioner, which otherwise is stated to have been obtained by fraud.

(Para 6)

S.S. Nara, Advocate *for the petitioner.*