

The Indian Law Reports

APPELLATE CIVIL.

Before Gurdev Singh, J.

SATNAM DASS ARORA,—Appellant.

versus

BACHAN SINGH,—Respondent.

Regular Second Appeal No. 928 of 1957.

Specific Relief Act (XLIII of 1963)—S. 39—Court finding that defendant encroached upon the plaintiff's land—Whether can refuse to award a decree for possession to plaintiff and award compensation instead on the ground that removal of the structure will entail some hardship or monetary loss to defendant.

1965

July, 29th

Held, that after having come to a finding that the defendant had encroached upon a part of the plaintiff's property, the courts could not refuse to award him a decree for possession and instead order that Rs. 400 by way of compensation for that property be paid to him merely because the removal of the structure would entail some hardship or monetary loss to the defendant. The suits for injunction and possession stand on different footings and the principle governing the grant of mandatory injunction cannot be imported into cases in which relief for possession is prayed for. In a suit for possession the plaintiff is entitled to stand upon his strict rights and he cannot be compelled to accept compensation in lieu of possession.

Regular Second Appeal from the decree of the Court of Shri Bahal Singh, Senior Sub-Judge with Enhanced Appellate Powers, Rohtak, dated the 31st day of May, 1957, affirming that of Shri B. R. Guliani, Sub-Judge II Class, Rohtak, dated the 18th March, 1957, dismissing the plaintiff's suit for the relief of mandatory injunction but in lieu thereof granting him a decree for Rs. 400 with costs of the suit, as compensation for the site encroached upon. The appellate Court left the parties to bear their own costs.

RAJINDER NATH AGGARWAL, ADVOCATE, for the Appellant.

F. C. MITTAL, ADVOCATE, for the Respondent.

JUDGMENT.

Gurdev Singh, J. GURDEV SINGH, J.—This judgment will dispose of two cross Regular Second Appeals (Nos. 928 and 978 of 1957) directed against the appellate decree and judgment of the Senior Subordinate Judge, Rohtak, dated 31st May, 1957.

The parties to this appeal are owners of two adjoining plots of land situate in the area known as Eight Marla Colony, at Rohtak, which they had purchased from the Punjab Government on instalment basis. Bachan Singh had purchased plot or quarter No. 244 having an area of 215 square yards by means of the sale deed, Exhibit P. 8, while Satnam Das was purchaser of plot No. 246 which adjoins quarter No. 244 on its southern side. On 18th November, 1956, Bachan Singh brought a suit out of which this appeal has arisen for possession of an area measuring $2\frac{1}{2}$ feet \times 60 feet, marked ABCD in the plan attached to the plaint, complaining that the defendant Satnam Das had encroached upon this portion of his plot by erecting a partition wall and constructing a room. A mandatory injunction for removal of the structure standing on the encroached land was also prayed for.

In contesting the suit, Satnam Das, besides denying the allegation that he had encroached upon any part of the plaintiff's property, pleaded that since the wall and the room were constructed under the *bona fide* impression that the area of the two quarters was equal and at the time of the construction there was no objection either from Bachan Singh or Sunder Lal, to whom plot No. 244 had been sold earlier, no order for demolition of the structure could be made even if it was proved that the area underneath was a part of the plaintiffs property. The trial proceeded on the following issues:...

- (1) Whether the plaintiff is the owner of the quarter No. 244 with area ABCD ?
- (2) Whether the defendant has encroached upon the land ABCD belonging to the plaintiff and also forming part of quarter No. 244?
- (3) If issue No. 2 is not proved, what is the extent of the encroachment, if any?

- (4) If issues Nos. 1 to 3 are proved in favour of the plaintiff, is the plaintiff not entitled to decree of mandatory injunction as prayed for, and in that case is he entitled to compensation? If so, to what amount?
- (5) Whether the plaintiff is estopped to bring the present suit?
- (6) Relief.

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The learned Subordinate Judge found that the area in dispute measuring 17 square yards was a part of quarter No. 244 belonging to plaintiff Bachan Singh, and the defendant had encroached upon it. He, however, refused to pass a decree for its possession, and holding that the compensation would meet the ends of justice, awarded Rs. 400 to the plaintiff with costs of the suit. Both the parties feeling aggrieved went up in appeal but without success. Now both of them have come to this Court for redress.

There is a concurrent finding of both the Courts below that the strip of land ABCD claimed by Bachan Singh belonged to him being a part of his plot of land measuring 215 square yards, and that the defendant Satnam Das had encroached upon it. This is a finding of fact which cannot be questioned in second appeal, and the learned counsel for the defendant Satnam Das did not question its correctness. The sole contention raised by him was that Rs. 400 awarded as compensation to the plaintiff is grossly excessive and Bachan Singh was not entitled to anything more than Rs. 85 as that was the market price of the encroached area.

In the cross-appeal preferred by Bachan Singh plaintiff, it is argued that having come to a finding that the defendant had wantonly encroached upon the plaintiff's property, it was the clear duty of the Courts below to award a decree for possession by removal of the structure standing on the land in dispute, and they gravely erred in permitting the defendant to retain the property merely on payment of Rs. 400 as compensation. In refusing to the plaintiff the relief of possession of the area of which he has been held to be the owner, the Courts below have been influenced by the fact that a portion of that area is under a room built by the defendant and he has also constructed a wall over it partitioning the two properties, and if the

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structure is ordered to be demolished, it will cause a good deal of loss to the defendant. Relying upon *Nidamarti Jaladurga Prasadarayudu v. Jadooram Sowcar and another* (1), *Mool Raj and others v. Janeshwar Lal* (2), and *Lalji Dayal v. Vishvanath Prabhuram Vaidya and others* (3), the learned Senior Subordinate Judge has held that it was a fit case for refusal of relief by way of mandatory injunction to demolish the structure in view of the fact that the encroachment had existed for some time and no objection was raised when the structure was put on it.

The sole question for consideration is whether after having come to a finding that the defendant had encroached, upon a part of the plaintiff's property, the Courts could refuse to award him a decree for possession and instead order that Rs. 400 by way of compensation for that property be paid to him merely because the removal of the structure would entail some hardship or monetary loss to the defendant. On a consideration of the various authorities bearing on the point, I am of the opinion that the answer to this question must be in the negative. In *The Secretary of State v. Labha Ram and others* (4), a Division Bench of that Court held that where the defendants encroached on Government land and erected buildings on it, the principles for grant of mandatory injunction did not apply and the plaintiff was entitled to stand upon his strict rights and obtain a decree for possession of the property in dispute. Reliance in this connection was placed upon *Rahmutulla Khan v. Secretary of State for India* (5). In that case dealing with the argument that the plaintiff had abstained for considerable period from suing for possession, the learned Judge said:—

“On the authorities the respondent's abstinence for a considerable period from suing for possession the suit being within limitation, does not create an equity in favour of the appellant such as deprives the respondent of his strict rights and the latter has the option of making the appellant

(1) A.I.R. 1936 Mad. 687.

(2) A.I.R. 1939 Lah. 502.

(3) 116 I.C. 234.

(4) A.I.R. 1935 Lah. 389.

(5) 63 P.R. 1913.

remove the materials of his buildings or paying compensation for the value of the buildings."

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The Secretary of State for India in Council v. Jat Mal (6), is another authority which was noticed by the Lahore High Court in *The Secretary of State v. Labha Ram and others*, (supra) where Addison, J., ruled that in a suit for possession of land belonging to the plaintiff which had been built upon by the defendant, the plaintiff was entitled to stand upon his strict rights, and the Court had no discretion to refuse the relief claimed as it had in a suit for mandatory injunction. The learned Judge had observed in that case:—

"The lower Appellate Court purported to follow certain rulings to the effect that the jurisdiction to grant a mandatory injunction should be exercised with caution and should be strictly confined to cases where the remedy by damages is inadequate for the purposes of justice. This was a clear mistake on the part of the lower Appellate Court. The suit was not for the mandatory injunction but was a simple suit for possession to which the principles in question did not apply."

The authorities relied upon by the learned Senior Subordinate Judge are clearly distinguishable and do not justify the refusal of the plaintiff's relief by way of possession. In *Mool Raj and others v. Janeshwar Lal* (supra) the question dealt with was merely of estoppel, and it was held that where a person knowing that another person had encroached upon his land by erecting a costly building keeps silent and raises no objection to the encroachment, he is estopped from bringing a suit for possession of land encroached upon by that person. In the case before us there is no plea of estoppel nor is there any finding by the lower appellate Court that the plaintiff was estopped from suing for possession. In *Lalji Dayal v. Vishwanath Prabhuram Vaidya and others* (supra), a Division Bench of the Bombay High Court held that a Court would not issue a mandatory injunction to demolish a structure which had been constructed at considerable cost even if it

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was an encroachment upon another's land unless it could be shown that its existence would cause such damage to the owner of the land encroached upon as would not be compensated by money. At the same time it was observed in that case that if dishonesty of purpose or knowledge of trespass was brought home to the defendant, it would be a case for a mandatory injunction and not for compensation. In that case, their Lordships were dealing with a suit for mandatory injunction and thus they applied principles governing such injunctions one of which being that if compensation affords adequate relief, mandatory injunction will not issue. Again *Niddmatti Jaladurga Prasadarayudu v. Jadooram Sowcar and another* (1), a learned Judge of that Court was dealing with a case for mandatory injunction for removal of a structure from a joint lane of the parties. Though Wadsworth, J., held that it was a statutory rule that an injunction should only be granted when pecuniary compensation would not afford adequate relief, the Courts have recognised that when the issue of a mandatory injunction would involve the removal of a completed structure which entails no inconvenience and only a slight invasion of the plaintiff's rights not committed wantonly or after protest, pecuniary compensation is the more appropriate remedy. At the same time, the learned Judge held that where considerable area of land including trees is affected, and the prayer is for possession as well as injunction for the removal of the structures, compensation in lieu of mandatory injunction should not be granted. The rule deducible from all these decisions is that suits for injunction and possession stand on different footings and the principles governing the grant of mandatory injunction cannot be imported into cases in which relief for possession is prayed for. So far as the decisions of the Lahore High Court are concerned, they lay emphasis on the fact that in a suit for possession the plaintiff is entitled to stand upon his strict rights, and he cannot be compelled to accept compensation in lieu of possession. Even if the Court has discretion in the matter, I am of the opinion that this is not a case in which the discretion could be exercised in the defendant's favour. The area that he had purchased was only 188 square yards, whereas the area of the plaintiff's plot of land was 215 square yards. Even before the property was transferred to Bachan Singh, his predecessor-in-interest Sunder Lal had complained about this encroachment. Despite that, the defendant con-

tinued to remain in possession and built upon a portion of the plaintiff's land. The strip of land upon which he has encroached is $2\frac{1}{2}$ feet \times 60 feet on the southern side of the plaintiff's property. If the plaintiff is deprived of it, he will certainly be hard hit as the area which is already in his possession is less than 200 square yards.

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For the foregoing reasons, I find that the plaintiff's suit for possession had been wrongly thrown out. I would, accordingly, accept his appeal (Regular Second Appeal No. 978 of 1957 with costs, and modifying the decree of the Courts below award him possession of the property by removal of the structure standing upon the encroached land. The defendant's appeal (Regular Second Appeal No. 928 of 1957) *ipso facto* fails and is dismissed with costs.

B.R.T.

CIVIL MISCELLANEOUS

Before S. K. Kapur, J.

SANTOSH KUMAR,—*Petitioner.*

versus

THE CHIEF COMMISSIONER, DELHI, AND OTHERS,—*Respondents.*

C.W. 844-D of 1962.

Resettlement of Displaced Persons (Land Acquisition) Act (LX of 1948)—S. 3—Land acquired for resettlement of displaced persons—Whether can be utilised for establishing schools and dispensaries etc.—Resettlement of Displaced Persons (Land Acquisition) Rules, 1948—Rule 9—Whether ultra vires the Act—Constitution of India (1950)—Art.—14—Plots of some owners returned while that of the petitioner utilised—Whether amounts to discrimination.

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April, 2nd

Held, that the very object of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948, is to resettle displaced persons. When colonies are established and plots of land allotted for residence of displaced persons, it would be far-fetched to suggest that no part of the land acquired under the Act can be used for establishing schools, hospitals and dispensaries for providing necessary amenities and facilities to the residents of the locality. So long as the utilisation for construction of schools and buildings is ancillary to or intended for the furtherance of the primary object of the Act, namely the resettlement of the displaced persons, no exception can be taken to the same.