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RSA-1047-2014 (O&M) &
RSA-5927-2015 (O&M)

[119] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

[1] RSA-1047-2014 (O&M)
Date of Decision : 16.01.2025

Firm Messers National Wollen Mills through
Shri Charanjit Kapoor, its partner ...Appellant

versus

Bubber Containers (P) Limited through Directors
of the defendant/respondent Company, Amritsar.Respondents

[2] RSA-5927-2015 (O&M)

Bubber Containers (P) Limited, Amritsar through
its authorised signatory Manjyot Singh, Director
of the Appellant Company, Amritsar ...Appellant

versus

Firm Messers National Wollen Mills through
Shri Charanjit Kapoor, its partnerRespondent

Coram : **HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the appellant in RSA-1047-2014.

Mrs. Munisha Gandhi, Senior Advocate and
Mr. Suvineet Sharma, Advocate with
Ms. Salina Chalana and Mr. Adarsh Dubey,
Advocates for the respondents
in RSA-1047-2014 and for the appellant
in RSA-5927-2015 .

PANKAJ JAIN, J. (ORAL)

[1] Plaintiff is in second appeal.

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[2] These two instant appeals will dispose off two cross-appeals directed against the same judgment.

[3] For convenience, parties are hereinafter referred to by their original positions as in the suit i.e. appellant as plaintiff and respondents as defendants.

[4] RSA-1047-2014 is at the behest of the plaintiff and RSA-5927-2015 is at the behest of the defendants.

[5] Plaintiff filed a suit for permanent injunction, seeking decree of restraint against the defendants from interfering in his peaceful possession over the industrial plots bearing Nos.16, 17, 24 & 25 situated in Industrial Development Colony near Guru Nanak Dev University, Amritsar. It was claimed that the plots in question, were allotted in favour of the plaintiff-firm and the firm is in possession as owners thereof.

[6] Suit was resisted by the defendants for denying the ownership of the plaintiff.

[7] It was claimed that the property in fact never vested in the partnership firm. The defendants are allottee under the Industries Department, State of Punjab and are thus real owner thereof.

[8] On the basis of pleadings, following issues were framed:-

- “1) *Whether the plaintiff is a registered partnership firm and Shri Charanjit Kapoor is one of its registered partners? OPP.*
- 2) *Whether the plots No. 16, 17, 24 and 25 were allotted by the Industries Department to the plaintiff? OPP*
- 3) *Whether the plaintiffs are owners in possession of the lots in question as alleged? OPP.*

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- 4) *Whether the plots in question stands resumed and re-sold to the defendant and that defendant is in possession thereof? OPD.*
- 5) *Whether the plaintiff is entitled to permanent injunction as prayed for? OPP.*
- 6) *Relief. ”*

[9] Findings on Issue Nos.2 & 3 were returned against the plaintiff by the Court of first instance. It was held that the plaintiff was not the owner or allottee as claimed. While returning finding on Issue No.4, Court relied upon testimony of DW-10 to hold that though defendants have been allotted plots after resumption but it is only the symbolic possession that has been handed over to them. Thus, learned Trial Court though found that the plaintiff is in physical possession but held his possession to be illegal not sustainable. Suit was ordered to be dismissed. The aforesaid findings stand affirmed by the learned Appellate Court in appeal.

[10] Plaintiff has filed appeal, impugning the judgment and decree.

[11] Defendants are in appeal, impugning the findings on Issue No.4 with respect to possession.

[12] Mr. Bhan, Senior Counsel, while assailing the judgment and decree passed by both the Courts below, asserts that the Courts below, misdirected themselves in ignoring the fact that the suit was simplicitor for grant of decree of permanent injunction. The only determining factor being ‘physical possession’, once the plaintiff has been found to be in possession concurrently by both the Courts, the suit ought to have been decreed in favour of the plaintiff. He thus, submits that even though plaintiff has no title but having being found in possession is entitled to decree of permanent

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injunction.

[13] *Per contra*, learned Senior Counsel appearing for the defendants submits that even though the Courts below found that the plaintiff was in possession, but it has been held that the possession of the plaintiff after resumption was that of a trespasser and thus, plaintiff was not entitled for injunction. Defendant being lawful allottee, suit against true owner was not maintainable.

[14] From the conjoint reading of documents (Exhibits D-8 & D-11), it is evident that the defendants were handed over possession after allotment and in view of the overwhelming documentary evidence on record, Court ought not have given precedence to the oral testimony.

[15] I have heard counsel for the parties and have carefully gone through the records of the case.

[16] Learned Senior counsel appearing for the appellant is not in a position to dispute that the resumption proceedings *qua* the plots against appellant stand concluded. Even prior to filing of the suit, the same became final. The plots stand further allotted. Even if for the sake of argument, plaintiff is held to be in possession, in order to maintain suit for perpetual injunction, he needs to show that his possession is lawful. The question is, “can plaintiff seek decree of permanent injunction against true owner?” Supreme Court in ‘**Sopan Sukhdeo Sable versus Assistant Charity Commissioner**’, reported as (2004) 3 SCC 137 while answering the said issue, observed as under:-

“25. Now the other aspect of the matter needs to be noted. Assuming a trespasser ousted can seek restoration of possession

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*under Section 6 of the Specific Relief Act, 1963, can the trespasser seek injunction against the true owner? This question does not entirely depend upon Section 6 of the Specific Relief Act, but mainly depends upon certain general principles applicable to the law of injunctions and as to the scope of the exercise of discretion while granting injunction. In **Mahadeo Savlaram Sheike v. Pune Municipal Corporation** (1995 (3) SCC 33), it was held, after referring to Woodrofe : "Law relating to injunction; L.C. Goyal, L.C. : "Law of injunctions; Bean David : Injunctions; Jayce : Injunctions and other leading Articles on the subject that the appellant who was a trespasser in possession could not seek injunction against the true owner. In that context this Court quoted **Shiv Kumar Chadha v. Municipal Corpn. Of Delhi** [(1993 3 SCC 161) wherein it was observed that injunction is discretionary and that:-*

"Judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the Court".

26. Reference was also made to **Dalpat Kumar v. Prahlad Singh** (1992 (1) SCC 719) in regard to the meaning of the words "prima facie case" and "balance of convenience" and observed in Mahadeo's case (*supra*) that:

"9. It is settled law that no injunction could be granted against the owner at the instance of a person in unlawful possession."

[17] Section 38 of the Specific Relief Act, 1963 governs the grant of perpetual injunctions. The same read as under:-

"38. Perpetual injunction when granted.—

(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

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- (2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.*
- (3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:—*
- (a) where the defendant is trustee of the property for the plaintiff;*
 - (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;*
 - (c) where the invasion is such that compensation in money would not afford adequate relief;*
 - (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.”*

[18] Once the resumption and the subsequent allotment has been proved beyond doubt, plaintiff cannot claim his possession to be rightful or to be the one which needs to be protected being one of the situations as contemplated under Section 38(3).

[19] At this stage, it needs to be observed that in the present suit, though the plaintiff claimed perpetual injunction but the same was being claimed asserting title over the suit land. Title of the plaintiff was seriously disputed by the defendants. Thus, the plaintiff on the date of suit was required to plead and prove that he was in lawful possession of the suit property. Once, defendants raised serious issue with respect to title of the plaintiff and plaintiff himself asserted title, the findings recorded by the Courts below on Issue Nos.2, 3 & 4 have assumed much significance.

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Reference can be made to law laid down by Supreme Court in '**Anathula Sudhakar versus P. Buchi Reddy**', reported as (2008) 4 SCC 594, which reads as under:-

"21. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :-

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the



remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case. ”

[20] Further reference can be made to observations made by Supreme Court in the case of ‘**Jharkhand State Housing Board versus Didar Singh**’, reported as (2019) 17 SCC 692, observing as under:-

“11. It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, the plaintiff cannot maintain a suit for bare injunction.”

[21] In view thereof, this Court finds that the Courts below rightly dismissed the suit filed by the plaintiff.

[22] Counsel representing defendants submits that in view of the

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findings given by this Court hereinabove and the fact that the suit filed by the plaintiff has been dismissed, she does not wish to press her appeal. RSA-5927-2015 is thus *dismissed* as not pressed.

[23] All pending miscellaneous application(s), if any, also stands *disposed off*.

[24] Photocopy of this order be placed on the file of connected case.

(PANKAJ JAIN)
JUDGE

16.01.2025
'R. Sharma'

Whether speaking/ reasoned : *Yes/No*
Whether reportable : *Yes/No*