

PETITIONER:
NAGAR PALIKA, JIND.

Vs.

RESPONDENT:
JAGAT SINGH, ADVOCATE.

DATE OF JUDGMENT 28/03/1995

BENCH:
SINGH N.P. (J)
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SINGH N.P. (J)
VERMA, JAGDISH SARAN (J)

CITATION:
1995 AIR 1377 1995 SCC (3) 426
JT 1995 (3) 281 1995 SCALE (2) 512

ACT:

HEADNOTE:

JUDGMENT:

N.P. SINGH, J.:

1. The Municipal Committee, Jind, has filed this appeal for setting aside the judgment of the Additional District Judge (hereinafter referred to as 'the Court of Appeal') decreeing the suit filed on behalf of the respondent, which had been dismissed by the Trial Court. The Second Appeal filed on behalf of the appellant, before the High Court was dismissed in limine. Thereafter, Special Leave Petition (Civil) No.562 of 1987 was filed before this Court, which was permitted to be withdrawn, to enable the appellant to file a Review Petition before the High Court. That Review Petition was dismissed by the High Court saying that no ground for review had been made out.

2. The respondent filed the suit in question for injunction restraining the appellant from interfering with the possession of respondent over 5 kanals of land, comprised in Khewat No. 134, Khatoni No. 155, rectangle No. 173, Killa No.27/1. The respondent claimed to be the owner of the said land and asserted that he was in possession thereof.

3. The claim of the respondent was resisted on behalf of Municipal Committee saying that the said respondent was neither the owner of the land in question nor he was in possession thereof. It was asserted that the land being "gair-mumkin johar", in which the Municipal Committee had already constructed a park, there was no question of the respondent acquiring any right title interest in the same. According to the appellant, the said respondent had made some unauthorised encroachment over the same because of which a statutory notice was given to him, which was challenged by the said respondent in the suit in question.

4. The learned subordinate Judge on consideration of the materials on record came to the conclusion that the respondent had failed to prove that he was the owner and was in possession of the suit land. On that finding the suit

was dismissed. The Court of Appeal, set-aside the finding recorded by the Trial Court and decreed the suit of the respondent, saying that the tide of Prem Singh, who was alleged to be the predecessor in interest of the respondent, had been established. It was also held that the appellant was in possession of the suit property. The Second Appeal filed on behalf of the appellant-Municipal Committee as already mentioned above was dismissed. The Review Petition filed to recall the order of dismissal of the Second Appeal was also dismissed in limine.

5. It may be mentioned at the out-set that throughout the suit has been treated to be a suit based on title and for confirmation of possession. The learned counsel, appearing for the appellant-Municipal Committee, pointed out that the Court of Appeal while decreeing the suit of the respondent, committed a serious error of law when before examining the question as to whether respondent had been able to establish his title over the suit land, it proceeded to consider only the materials on record in support of the claim of the possession made on behalf of the respondent. The Trial Court had examined the claim

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of the title made on behalf of the respondent in detail and had recorded a finding that the said respondent had failed to prove his title to the suit. Even the sale deed through which the said respondent claimed to have purchased the land in dispute had not been produced before the Court. An objection was taken on behalf of the appellant against that part of the judgment of the Court of Appeal, where it has been stated that although the respondent had not produced the sale deed through which he had acquired the title to the land in question but that was of no consequence as that fact had been admitted by the Municipal Committee. In this connection, reference was made to the written statement filed on behalf of the Municipal Committee disputing the title and possession of the respondent. Our attention was drawn to the plaint, filed on behalf of the respondent, and the written statement filed on behalf of the appellant. The respondent has simply stated in respect of his title and possession in paragraph 1 of the plaint:

"That plaintiff is owner and in possession of the property details of which are given in the head note of the plaint.

The head note of the plaint says:

"Suit for permanent injunction restraining the defendant from taking forcible possession of the land comprised in khewat No.113 Khatoni No.155 Rect. No.173 Killa No.27/1 measuring 5 kanals as pr Jamabandi 1974-75 situated in the revenue estate of Jind and further restrainin

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the defendant from interfering into possession of the plaintiff and further restraining the defendant from raising any construction on it".

No details have been stated in the plaint as to how the respondent became the owner of the land in question and when he came in possession thereof. On reading paragraph 1 along with 'head note' aforesaid, it appears that the claim for title has been made on behalf of the respondent only on basis of jamabandhi for the year 1974-75 of the revenue estate of Jind. In spite of our repeated queries to the counsel appearing for the respondent, no explanation was furnished on behalf of the respondent, as to how in a suit based on title no details in respect of the acquisition of

the title were stated in the plaint. In the written statement filed on behalf of the Municipal Committee in respect of the assertion made in paragraph 1 of the plaint, it has been said:

"That para 1 of the plaint is and denied. The plaintiff is not in possession of the suit property. In fact suit property is Gair-Mum-Kin Johar. Nagarpalika has converted it into park. Suit property is of Nagarpatika, Jind and the plaintiff has no concern with the suit property".

6. The counsel appearing for the respondent, could not explain as to how in face of such clear denial of the title and possession of the respondent by the Municipal Committee in its written statement, the Court of Appeal proceeded on the assumption that the acquisition of the title through the sale deed, which had not been produced before the court, was an admitted fact in the case and had never been questioned by the Municipal Committee. According to us, when the Court of Appeal proceeded to consider the evidence relating to the possession of the respondent after the alleged date of purchase by him through the sale deed in question, which was never produced before the Court, the Court of Appeal committed a grave error. It never applied its mind to the main is-

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sue, in a suit based on title, whether the respondent had proved his title to the suit property. It cannot be disputed that onus to prove his title to the property in question was on the said respondent. It further appears, that on behalf of the appellant, it was pointed out before the Court of Appeal that the said respondent was claiming the share of one of the co-sharers in the patti, but no co-sharer can convey title to a specific part of joint property. Having omitted to consider the basic issues in the case, the Court of Appeal proceeded only to consider the revenue records from the year 1974-75 like jamabandhi for the year 1974-75 and Khasra Gindwari pertaining to the year 1977-79.

7. The claim of the respondent was that he had purchased the suit land through a sale deed in the year 1970. Thereafter he filed a suit on 17.4.1971 for permanent injunction against the appellant. 'Mat suit was ultimately withdrawn on 7.11.197 with permission to file a fresh suit. Ultimately, the suit with which we are concerned was filed on 23.8.1979. In this background any reliance on entries in the revenue records after 1971 was of not much consequence and value, because the respondent had already instituted the earlier suit which was then pending. In any case, an order of mutation in the name of the respondent in the revenue records can not be ;a source of title. In the case of Nirman Singh v. Lal Rudra Partab, 1926 PC 100, in respect of mutation of names in revenue records, it was said:

"They are nothing of the kind as has been pointed out times immunerable by the Judicial Committee. They are much more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid.

It is little less than a travesty of judicial proceeding to regard the two orders of the

Extra Commissioner of Bahraich and Mr.M.L.Ferrar, Deputy Commissioner, as judicial determinations expelling proprio vigore any individual from any proprietary right or interest he claim in immovable property".

8. Faced with this situation, the learned counsel for the respondent, took a stand that even if the respondent had failed to prove his title, the suit filed on behalf of the respondent, should be treated as a suit based on possession and dispossession in terms of Section 6 of the Specific Relief Act, 1963. Once a suit has been filed by the respondent claiming to be the owner and being in possession of the land in question, how that suit can be treated as a suit based on possession and dispossession Section 6 of without reference to title? the Specific Relief Act, 1963 says that if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit. Section 6 is a corresponding provision to Section 9 of the Specific Relief Act, 1877, Section 9 of the earlier Act, which has been retained with some changes in the Specific Relief Act, 1963 is based on the principle that even a trespasser is entitled to protect his possession except against a true owner and purports to protect a person in Possession from being dispossessed except in due course of law. Section 6

286 provides a summary remedy for a person who, being, in possession of immovable property is ousted therefrom. In such circumstances, it is possible that the person so dispossessed may pursue summary and speedy remedy through the medium of the Civil Court for restoration of possession. It has been said that this Section is a reproduction of provision of the Roman Law under which by an interdictum de vi a person wrongfully dispossessed from property could recover it by proving previous possession, without being required to prove his title. Disputed questions of title are to be decided by due process of law but the peaceful possession is to be protected from a trespasser under Section 6 of the Act without regard to the question of the origin of the possession. Such suit can be entertained and decreed only where both the plaintiff and the defendant have no title to the suit land, but as the plaintiff proves his prior possession because of that he is entitled to a decree for possession against the defendant who has dispossessed him. The plaint of such a suit must aver only previous possession and dispossession by the defendant, other wise than in due course of law. In the case of Perry v. Clissold, 1907 AC 73, it was said: -

"It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is for ever extinguished and the possessory owner acquires an absolute title. "

The aforesaid view was approved by this Court in the case of Nair Service Society v, K.C. Alexander, AIR 1968 SC 1165 =

(1968) 3 SCR 163. This Court said in connection with the plaintiff of that case that he being in peaceful possession was entitled to remain in possession and only the State could evict him. It was further said that the action of the Society was a violent invasion over the possession of the plaintiff. It was pointed out:-

"...the law as it stands in India the plaintiff could maintain a possessor suit under the provisions of the Specific Relief Act in which title would be immaterial or a suit for possession within 12 years in which the question of title could be raised."

9. We fail to appreciate as to how the principle of Section 6 of Specific Relief Act, 1963 can be applied in the facts and circumstances of the present case. The respondent, who was the plaintiff, never alleged that he had been dispossessed by the appellant-Municipal Committee. On the other hand, he claimed to be the owner of the land in question and asserted that he was in possession over the same. He sought for permanent injunction restraining the appellant from interfering with his possession. Both the parties led evidences in support of their respective claims including on the question of title.

10. It was pointed out, on behalf of the appellant, that in the records, land including the portion which is in the dispute had been recorded as gair mumlkin johar which means a public pond. The Trial Court referred to all documentary evidences in support of the finding that the respondent was attempting to encroach upon a portion of a public land, over which he could

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not have acquired any title. The Court of Appeal, instead of finding from the materials on record whether the respondent as plaintiff has proved his title and subsisting settled possession in respect of the disputed land, proceeded to record a finding on the claim of the possession of the respondent, primarily on basis of the entry in the revenue records made in the year 1974-75 and thereafter during the pendency of the first suit filed on behalf of the respondent. The Court of Appeal committed a substantial error of law by decreeing the suit of the respondent without recording a finding in respect of his claim of title over the suit land. We are of the view that the High Court could not have dismissed the Second Appeal filed on behalf of the appellant-Municipal Committee in limine.

11. On behalf of the respondent, reference was made to the case of Chhote Khan v. Mal Khan, AIR 1954 SC 575, where it was said by this Court that entries in Jamabandhies fall within the purview of the record of rights under Section 31 of the Punjab Land Revenue Act and as such are to be presumed to be, true until the contrary is proved. Reference was also made to the case of Durga Singh v. Tholu, AIR 1963 SC 361, where it was said that in an ejectment suit a finding by the District Judge on the question whether the defendants were the tenants of the plaintiff arrived at, on the consideration of all evidence, oral and documentary, adduced by the parties, was a finding of fact and could not have been set aside in Second Appeal by the High Court. Reliance was also placed on the case of Vishwa Vijay v. Fakhrul Hassan, AIR 1976 SC 1485, in which this Court held that the finding of lower appellate court on the question whether entries in revenue record were genuine or fraudulent was a question of fact and could not be set aside in Second Appeal. It has already been pointed out that the Court of Appeal without considering the question whether the

plaintiff-respondent had proved his title to the property in dispute proceeded to examine whether the said respondent was in possession thereof In a suit for ejectment based on title it was incumbent on part of the Court of Appeal first to record a finding on the claim of title to the suit land made on behalf of the respondent. The Court of Appeal never inquired or investigated that question which was at issue saying that the title of the plaintiff-respondent was admitted by the appellant. This was a serious error of record. The title and possession of the respondent had always been disputed by the appellant from the stage of the written statement. In this background, suit of the respondent could not have been decreed merely on basis of entries in the revenue records during the pendency of the earlier suit filed in the year 1971. As such the cases relied upon on behalf of the respondent have no bearing on the facts of the present appeal. A substantial question of law was involved in the Second Appeal presented before the High Court against the judgment of the Court of Appeal and the High Court ought to have interfered and set-aside the judgment of the Court of Appeal.

12. Accordingly, the appeal is allowed. The judgment of the Court of Appeal and the orders passed by the High Court are set aside. The judgment of the Trial Court is restored. There is no question of injuncting the appellant from taking further steps in connection with the suit land over which the respondent had neither title

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nor he was in possession thereof However, in the facts and circumstances of the case, there shall be no orders as to cost.