

Equivalent citations: 1994 IIIAD Delhi 1035, 1994 (30) DRJ 596

Bench: R Lahoti

Sham Lal vs Rajinder Kumar And Ors. on 5/8/1994

JUDGMENT

R.C. Lahoti, J.

(1) This order shall govern the disposal of I.A. NO. 3655/93 and 5710/93. I.A. 3655/93 is an application under Order 39 Rules 1-2 Civil Procedure Code seeking grant of an ad interim preventive injunction protecting the possession of the plaintiff over the suit property. I.A. No. 5710/93 filed by the defendants seeks setting aside of the ex parte ad interim order dated 2.4.1993 whereby status quo as on that day with respect to the suit property has been directed to be maintained.

(2) The suit property consists of land bearing Khasra No. 640/151/2/1 measuring 5 Bighas 15 biswas and No.205/2/2 measuring 1 Bigha and 2 biswas, total 6 Bighas and 17 biswas situated in village Rajpur Chawani, near C.C. Colony, Delhi. There is an old Kothi situated on the land. Popularly, the property is known as Laxami Narain Bagh.

(3) According to the plaintiff, he has been in open, peaceful and uninterrupted possession of the property for over 50 years. He has sown vegetables like onions, Kakri, lady finger and tomatoes and also laid flower bed (nursery) in the suit land. He has 17 buffaloes along with a cattle shed over the land. On 30.3.93, the defendants threatened the plaintiff and his family members with dispossession. Hence the suit for permanent preventive injunction protecting the plaintiff's possession over the suit property. An application under Order 39 Rules 1-2 Civil Procedure Code has also been filed seeking an ad interim injunction in identical terms.

(4) In their written statement and reply to the application for temporary injunction the defendants have submitted that they are the owners in possession of the suit property. The defendants have set out their source of title and possession along with the documentary evidence supporting their case in very many details. The suit property is ancestral property of the defendants having been inherited by them from their father late Dewan Anand Kumar. A part of the land was proposed to be acquired by the Government for the purpose of laying down a road. An agreement was entered into between the Government through the President of India and late father of the defendants whereupon a road was carved out through the land trifurcating the land into three pieces as per the plan filed. Road having been laid, the remaining part of the land with super structures thereon has continued in ownership and possession of the defendants. The plaintiff has never been recorded in possession of the land. Khasras Girdwari have all throughout recorded the defendants as owners in possession of the land. It is only in 1980 when an attempt was made by the plaintiff and his son Om Parkash to have themselves recorded in possession of the land in khasra Girdwari, wherein they could just succeed but on steps being taken by the defendant, the attempt of the plaintiff failed and the khasra entry was corrected. The defendant have filed all the relevant documents in support of their case set out in the written statement.

(5) Placing reliance on several decisions the learned counsel, for the plaintiff has tried to propound a proposition that the possession even if without title deserves to be protected if peaceful and settled. There cannot be a quarrel with the proposition sought to be propounded inasmuch as it is well settled that law respects possession and if one be in peaceful and settled possession of property then even the real owner may not take the law in its own hands and dispossess the person in possession.

(6) Before scrutinising the facts and material available on record so as to form an opinion on the entitlement of the plaintiff to the grant of injunction as is prayed for, the decisions relied on by the counsel for the plaintiff may be noticed. In *Midnapur Co. Vs. Naresh Narain*, 1924 P.C. 144, their Lordships have held :-

"IN India persons are not permitted to take forcible possession: they must obtain such possession as they are entitled to through a Court. Following the above said decision, the Supreme Court has held in *The East India Hotels Vs. Syndicate Bank*, :- In our jurisprudence governed by rule of law even unauthorised occupant can be ejected only in the manner provided by law In M.C.Chockalingam Vs. V. Manickavasagam a case

under Section 6 of the Specific Relief Act, 1963, their Lordship have observed : "Section 6 frowns upon forcible dispossession without recourse to law but does not at the same time declare that the possession of the evicted person is a lawful possession. The question of lawful possession does not enter the issue at that stage."

(7) Coming to the facts of this case, this Court cannot resist observing at the very outset that the plaint is very artistically drafted, confining it to the averments of such facts only as are convenient and with astuteness avoiding disclosure of such facts which though relevant do not suit the plaintiff. The plaint does not state the exact point of time and the manner in which the plaintiff entered in to possession of the suit property. The plaint does not say a word about the capacity in which the plaintiff occupies and uses the said property. Not a word has been stated about the person in whom the ownership of the property vests. The plaintiff does not say if he is paying the land revenue and/or taxes payable for the land.

(8) The documents filed by the plaintiff are photocopies of ration card, Tv license, passbook of Allahabad Bank and site plan. Needless to say that these documents are of no assistance to the plaintiff in so far as the question of title and possession over the suit property is concerned. The plaintiff has also filed khasra Girdwari relevant to the year 1980, wherein in column No.8, he has been recorded as "non occupancy tenant-cultivation by Sham Lal" In Column No.2, Dewan Anand Kumar and Smt Suhag Rani are shown as owners. However, documents filed by defendants include a copy of the Khasra Girdawari for the year 1980 entries made wherein show the owner (Diwan Anand Kumar) in possession. The credibility of entries in Khasra Girdwari for 1980 filed by the plaintiff is rendered doubtful.

(9) The defendants have filed Jamabandi and Khasra Girdwari for a period of 15 years running up to the year of the institution of the suit. In all these revenue records, the defendants are shown as owners in possession. Copies of electricity bills and correspondence with Desu have been filed showing the electricity connection in the said property standing in the name of the defendants. Copies of agreement between the defendant and the Govt through the President of India and copies of certain orders have been filed to substantiate the plea of the defendant as to the acquisition of part of the suit property by the Government from the defendants. Copies of assessment orders of the estate duty have been filed showing the suit property having been assessed with the defendants.

(10) Then there two sets of documents which deserve a special mention, Om Parkash the son of the plaintiff had made a report to the Shro Kingsway Camp Police Station Delhi, wherein he had designated himself a Chowkidar of Purani Kothi Laxmi Narain Ka Bagh. There is yet another letter addressed by him to an officer of Desu wherein too he had described himself as a paid servant and caretaker of the land in suit. Original receipts spread over a period from 1968 to 1973 have been filed which go to show the plaintiff receiving salary from late Dewan Anand Kumar for several months periodically. Though these receipts have been denied by the plaintiff when placed before him for the purpose of admission/denial but prima facie this court finds no reason to suspect the genuineness of the receipts.. The receipts purportedly bear the thumb marks of the plaintiff on revenue stamps.

(11) Thus, a comparative reading and appreciation of the documents filed by the parties leads to an inference that the defendants are the owners and also in possession of the suit property while the only relationship which the plaintiff bears to the defendants and their property is that of a paid servant entrusted with the job of watching and warding and taking care of the suit property.

(12) On the basis of the material available on record, it will be a misnomer to say that the plaintiff has been in 'possession' of the suit property. The plaintiff is neither a tenant, nor a licensee, nor a person even in unlawful

possession of the suit property. Possession of servant is possession of the real owner. A servant cannot be said to be having any interest in the suit property. It cannot be said that a servant or a chowkidar can exercise such a possession or right to possession over the property as to exclude the master and the real owner of the property from his possession or exercising right to possession over the property.

(13) Possession is flexible term and is not necessarily restricted to mere actual possession of the property. The legal conception of possession may be in various forms. The two elements of possession are the corpus and the animus. A person though in physical possession may not be in possession in the eye of law, if the animus be lacking. On the contrary, to be in possession, it is not necessary that one must be in actual physical contact. To gain the complete idea of possession, one must consider (i) the person possessing, (ii) the things possessed and, (iii) the persons excluded from possession. A man may hold an object without claiming any interest therein for himself. A servant though holding an object, holds it for his master. He has, therefore, merely custody of the thing and not the possession which would always be with the master though the master may not be in actual contact of the thing. It is in this light in which the concept of possession has to be understood in the context of a servant and & master.

(14) To have the advantage of law laid down in the rulings relied on by the learned counsel for the plaintiff he shall have to show plaintiff's settled and peaceful possession over the suit property, though he may not show his title. In the case at hand the plaintiff has utterly failed in bringing any material on record enabling a holding in his favor on the point of possession or even right to possess the suits property. Merely because the plaintiff was employed as a servant, or chowkidar to look after the property it cannot be said that he had entered into such possession of the property as would entitle him to exclude even the master from enjoying or claiming possession of the property or as would entitle him to compel the master staying away from his own property.

(15) The plaintiff was expected to have made a bold and clean disclosure of the facts in the plaint: Having entered into possession initially as a servant or Chowkidar if he had commenced prescribing hostile title by entering into possession of the suit property, then he should have mentioned the point of time with which that event had occurred. As already stated, the plaint does not go beyond making a bald assertion of the plaintiff being in possession.

(16) The plaintiff does not have any prima facie case. The balance of convenience does not lie in his favor. As he is not in possession, the question of his suffering any irreparable injury in the absence of an ad interim injunction does not arise. On the contrary, any interim injunction in favor of the plaintiff is sure to occasion an injury to the defendants.

(17) For the foregoing reasons, I.A. 3655/93 is rejected. I.A. 5710/93 is allowed. The interim order dated 2.4.93 directing status quo in the matter of possession over the suit property to be maintained is directed to be vacated.