

it does not appear that the respondent took any steps contemplated under Section 91 of the said Act. [Paras 15, 17] [367-B-D] A

1.2. Since there is no clear pleading in the case on hand as to who is the real owner of the suit schedule property and in absence of any assertion that the respondent is the owner of the property, the appellant is entitled for an injunction, as prayed, subject to the right of the true owner of the property (whoever it is) to evict the appellant in accordance with law. [Para 20] [368-C, D] B C

Perry v. Clissold, 1907 AC 73 and *Nair Service Society Ltd. v. K.C. Alexander & Others* 1968 SCR 163 : AIR 1968 SC 1165 - referred to.

Case Law Reference D

1907 AC 73 referred to Para 13

1968 SCR 163 referred to Para 13, 19

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7119 of 2014 E

From the Judgment and Order dated 23.01.2012 in SBCA No. 68 of 1993 of the High Court Of Rajasthan at Jodhpur.

Shekhar Prit Jha, Sunil Puri, Vikrant Bhardwaj for the appellants. F

Aruneshwar Gupta, Nikhil Singh for the Respondent.

The Judgment of the Court was delivered by G

CHELAMESWAR, J. : 1. Leave granted.

2. This appeal arises out of a judgment dated 23rd H

A January, 2012 of the High Court of Rajasthan at Jodhpur in an appeal under Section 100 of the Code of Civil Procedure, 1908 (for short "the CPC"). By the impugned judgment, the appeal was dismissed.

B 3. The appellant herein filed an Civil Suit No.71 of 1976
C on the file of the Additional Munsif and Judicial Magistrate, First Class, No. 1 Bikaner seeking a decree of permanent injunction restraining the respondent herein from dispossessing the appellant of a plot of land admeasuring 4914 sq. yards and further not to demolish the construction existing over the said property. The appellant pleaded uninterrupted possession of the suit scheduled property from the year 1942. From the averments of the plaint, it appears that the appellant encroached on the said property in the year 1942.

D 4. The respondent herein disputed the claim of uninterrupted possession from the year 1942 and stated in his written statement as follows:-

E "In the year 1965 to remove the illegal possession of the plaintiff in notice was issue to him and upon receiving no response, the boundary wall of the suit property was dismantled. However, again he illegally occupied the said property."

F It is further stated in the written statement:-

G "... improvement trust got removed the possession of the plaintiff in 1965. Therefore, the plaintiff again repossessed the same and action is being contemplated to remove him from the suit property. However, during this period a new policy was announced by the state Govt. according to which a policy of regularization unauthorized possession or allotment of alternative plot in lieu of the illegally occupied land was announced. As per the said policy to plaintiff was offered the policy of regularization of his 1808 sq. yrd. land at rate Rs. 3/- per sq. yrd and the same was to be offered
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in lieu of his illegal possession and constructional house over the land the plaintiff was issued a notice to this effect on two occasion with direction that he should deposit the amount. However, neither the plaintiff intended to deposit the amount nor he wished to remove his possession and he wants to enjoy the Govt. land free of cost." A B

5. Before we make any analysis of the above extracted portion of the written statement, we must place on record, the extract does not make very comfortable reading whether the mistakes occurring in the said extract are typographical errors or are errors in the draft is a matter for conjecture. It only demonstrates the sorry state of affairs of the Indian legal system. C

6. It can be seen from the above extracted portion of the written statement filed by the respondent herein in the suit that the respondent admitted the possession of the plaintiff in the year 1965 and also admitted that the appellant re-entered the property after having had been evicted from the same in the year 1965. D

7. Be that as it may, the above extracted portion of the written statement leaves no scope for any doubt that as on the date of the suit, even according to the respondents herein, the appellant/plaintiff was in possession of the suit schedule property and also that there was a house in existence in the said property. E F

8. On the basis of such pleadings, the trial court framed various issues. Relevant for the present purpose are:-

"(a) Whether the plaintiff is in possession of disputed property including the boundary wall and construction over it and land measuring 4914 yards as owner in possession and adverse against the defendant since 1942? G

(b) Whether the plaintiff is entitled for a decree of permanent injunction with respect to disputed property?" H

A 9. The trial court, on appreciation of evidence refused to believe the possession of the appellant prior to 1959 but recorded a conclusion that subsequent to 1959, the appellant has been in possession.¹

B 10. In spite of such a finding, the suit was dismissed. Aggrieved by the same, the appellant herein carried the matter in appeal under Section 96 of the CPC in Appeal Decree No.106 of 1982 on the file of the Additional District Judge, Bikaner which was also dismissed by judgment and decree dated 19th April, 1993. The appellant herein carried the C Second Appeal to the Rajasthan High Court unsuccessfully. Hence, the instant appeal.

D 11. The High Court proceeded on the basis that the entire case of the appellant is based solely on the ground of adverse possession commencing with the year 1942. In view of the fact that both the trial court and the first appellate court concurrently held that the appellant failed to prove his possession prior to 1959, the High Court opined the appellant failed to establish that he has been in possession of suit scheduled property for E a period of 30 years prior to filing of the suit and, therefore, held that the appellant cannot successfully pray for a permanent injunction. The High Court also held that there is no evidence or material to show that -

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1. ...Undisputedly, it is proved that since 1959 the plaintiff is in possession of the property which is also proved vide documentary evidence which has been placed on record and the same has been referred and it conclusively proves the same, however, with respect of possession of the plaintiff over disputed portion prior to 1959 and from 1942 is based on oral evidence and it will not be proper to rely on those oral evidence, because, firstly, the G age of the plaintiff was very less and secondly, how he got the possession over the property and further there is a important differences in the statement of the witnesses.

H ...The possession of the plaintiff is proved since 1959, however the ruling which has been referred above and after going through the same, it is clear that on the basis of the said possession it cannot presume that the plaintiff was in possession of the property before 1959.

"with knowledge of the true owners the appellant had been possessing the property as his own continuously and unobjectionably." A

Though, it makes no difference for the purpose of this case, we must record that the conclusion reached by the High Court that the possession of the appellant was without the knowledge of the true owner (respondent?) is contrary to the record. Two facts demolish the conclusion of the High Court. In the year 1965, a notice was issued to the appellant seeking to evict him under Section 91 of the Rajasthan Land Revenue Act. Secondly, the fact that even according to the written statement the appellant was offered under the policy of the State to regularize the occupation of the appellant a part of the suit scheduled property to the extent of 1808 sq. yards. B C

12. Even otherwise such conclusion recorded by the High Court, in our view, makes no difference to the prayer of the appellant. The suit was filed with the prayer as follows: D

"Pass a decree of permanent injunction in favour of the plaintiff and against the defendant, whereby restrained the defendant from dispossessing the plaintiff for an area 4914 sq. yards which has been shown in yellow colour in the site plan, and further the construction erected over it be not demolished and further plaintiff should not be dispossessed or any attempt to be taken to dispossess him from the said portion be stopped." E F

Though the appellant made assertions in the plaint that he became the owner of the suit property by adverse possession, he never sought a decree for a declaration of his title either by virtue of adverse possession or otherwise. As can be seen from the above extract, the prayer was simply for a permanent injunction. G

A 13. It is settled position of law laid down by the Privy Council in *Perry v. Clissold*, 1907 AC 73,-

B "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 forever extinguished and the possessory owner acquires an absolute title."

C The above statement was quoted with the approval by this Court in *Nair Service Society Ltd. v. K.C. Alexander & Others*, AIR 1968 SC 1165. Their Lordships at para 22 emphatically stated:-

D "The cases of the Judicial Committee are not binding on us but we approve of the dictum in 1907 AC 73."

E 14. The question, therefore, is that in view of the concurrent finding recorded by all the three courts below that the appellant has been in possession of the property (at least from the year 1959) whether the injunction as prayed for by the appellant can be denied? As can be seen from the judgment of the Privy Council referred to supra, a person such as the appellant in possession of land has a perfectly good title against the entire world except the rightful owner. However, the rightful owner must assert his title by the process of law within the period prescribed by the statutes of limitation applicable to the case.

F G 15. We have carefully scanned through the written statement. There is no assertion that the respondent is the real owner of the property though it is very boldly submitted before us that the State of Rajasthan is the owner of the property.

H 16. However, the respondent is not the State of Rajasthan.

What exactly is the legal character of the respondent is not known? Assuming that the State of Rajasthan is the real owner of the property in question, whether the respondent is legally authorized by the State of Rajasthan to recover possession of the suit scheduled property is not clear from the record.

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17. Assuming for the sake of argument that the respondent has some authority to evict the appellant, the eviction must be by a process known to law, i.e., either by filing a suit to evict the appellant or by resorting to some other procedure duly authorized by law. In this regard, learned counsel for the respondent placed reliance on Section 91 of the Rajasthan Land Revenue Act which, no doubt, authorises the summary eviction of encroachers of the government property by following the procedure prescribed therein. However, from the written statement it does not appear that the respondent² took any steps contemplated under Section 91 of the said Act. It appears that the respondent is under the belief that once Section 91 was invoked (in 1965), such an invocation for evicting the appellant summarily can eternally be relied upon by anybody for evicting the appellant.

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18. Law, in our opinion, does not sanction such process. Even according to the respondent, subsequent to the alleged eviction in 1965, the appellant re-entered possession of the suit scheduled property. In which case if the respondent desires to evict the appellant again, the same must be done in accordance with law by initiating appropriate proceedings. Until such process of eviction in accordance with law is initiated, the appellant's possession of the suit scheduled property is required to be protected.

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19. In the context of the right of the recovery of possession of immoveable property by a person who was dispossessed from such property, this Court, in *Nair Service Society Ltd.*

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2. We must not be understood to be declaring that Section 91 of the Rajasthan Land Revenue Act authorizes the respondent to summarily evict the encroachers.

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A (supra), while dealing with Section 9 of the Specific Relief Act, 1877 (corresponding to Section 6 of the Specific Relief Act, 1963) opined:

B "... The uniform view of this Court is that if Section 9 of the Specific Relief Act is utilised, the plaintiff need not prove title and the title of the defendant does not avail him. ..." (para 14)

C 20. In the light of the above principle of law laid down by this Court and in view of the fact that there is no clear pleading in the case on hand as to who is the real owner of the suit schedule property and absence of any assertion that the respondent is the owner of the property, we are of the opinion that the appellant is entitled for an injunction, as prayed, subject, of course, to the right of the true owner of the property (whoever D it is) to evict the appellant in accordance with law.

21. In the result, the appeal is allowed and suit is decreed as indicated above with costs throughout.

Bibhuti Bhushan Bose

Appeal allowed & Suit decreed.