CASE NO.:
Appeal (civil) 7662 of 1997

PETITIONER:
Rame Gowda (D) by Lrs.

RESPONDENT:
M. Varadappa Naidu (D) by Lrs. & Anr.

DATE OF JUDGMENT: 15/12/2003

BENCH:
R.C. Lahoti, B.N. Srikrishna & G.P. Mathur

JUDGMENT:
J U D G M E N T

R.C. Lahoti, J.

The defendant is in appeal feeling aggrieved by the judgment and decree of the Trial Court, upheld by the High Court, restraining him from interfering with the possession and enjoyment of the suit schedule property by the respondent.

The plaintiff and the defendant \026 both have expired. Their LRs are on record. For the sake of convenience we are making reference to the original parties i.e. the plaintiff and the defendant.

The suit property, a piece of land, is situated in Arekempanahally, 36th Division. It appears that the plaintiff and the defendant both claim to be owning two adjoining pieces of land. There is a dispute as to the exact dimensions and shapes (triangular or rectangular) of the pieces of land claimed to be owned and possessed respectively by the two parties. The real dispute, it seems, is about the demarcation of the boundaries of the two pieces of land. However, the fact remains, and that is relevant for our purpose, that the piece of land which forms the subject-matter of the suit is in the possession of the plaintiff-respondent. The plaintiff-respondent was raising construction over the piece of land in his possession, and that was obstructed by the defendant-appellant claiming that the land formed part of his property and was owned by him. The plaintiff filed a suit alleging his title as also his possession over the disputed piece of land. The Trial Court found that although the plaintiff had failed in proving his title, he had succeeded in proving his possession over the suit property which he was entitled to protect unless dispossessed therefrom by due process of law. On this finding the Trial Court issued an injunction restraining the defendant-appellant from interfering with the peaceful possession and enjoyment of the plaintiff-respondent over the suit property.

It is contended by the learned counsel for the defendant-appellant that the suit filed by the plaintiff was based on his title. The suit itself was defective inasmuch as declaration of title was not sought for though it was in dispute. Next, it is submitted that if the suit is based on title and if the plaintiff failed in proving his title, the suit ought to have been dismissed without regard to the fact that the plaintiff was in possession and whether the defendant had succeeded in proving his title or not. We find no merit in both these submissions so made and with force.

Salmond states in Jurisprudence (Twelfth Edition), "few relationships are as vital to man as that of possession, and we may expect any system of law, however primitive, to provide rules for its protection. . . . . . Law must provide for the safeguarding of possession. Human nature being what it is, men are tempted to prefer their own selfish and immediate interests to the wide and long-term interests of society in general. But since an attack on a man’s possession is an attack on something which may be

essential to him, it becomes almost tantamount to an assault on the man himself; and the possessor may well be stirred to defend himself with force. The result is violence, chaos and disorder." (at pp. 265, 266).

"In English Law possession is a good title of right against anyone who cannot show a better. A wrongful possessor has the rights of an owner with respect to all persons except earlier possessors and except the true owner himself. Many other legal systems, however, go much further than this, and treat possession as a provisional or temporary title even against the true owner himself. Even a wrongdoer, who is deprived of his possession, can recover it from any person whatever, simply on the ground of his possession. Even the true owner, who takes his own, may be forced in this way to restore it to the wrongdoer, and will not be permitted to set up his own superior title to it. He must first give up possession, and then proceed in due course of law for the recovery of the thing on the ground of his ownership. The intention of the law is that every possessor shall be entitled to retain and recover his possession, until deprived of it by a judgment according to law." (Salmond, ibid, pp. 294-295)

"Legal remedies thus appointed for the protection of possession even against ownership are called possessory, while those available for the protection of ownership itself may be distinguished as proprietary. In the modern and medieval civil law the distinction is expressed by the contrasted terms petitorium (a proprietary suit) and possessorium (a possessory suit)." (Salmond, ibid, p.295)

The law in India, as it has developed, accords with the jurisprudential thought as propounded by Salmond. In Midnapur Zamindary Co. Ltd. Vs. Kumar Naresh Narayan Roy and Ors. \026 1924 PC 144, Sir John Edge summed up the Indian law by stating that in India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court.

The thought has prevailed incessantly, till date, the last and latest one in the chain of decisions being Ramesh Chand Ardawatiya Vs. Anil Panjwani \026 (2003) 7 SCC 350. In-between, to quote a few out of severals, in Lallu Yeshwant Singh (dead) by his legal representative Vs. Rao Jagdish Singh and others \026 (1968) 2 SCR 203, this Court has held that a landlord did commit trespass when he forcibly entered his own land in the possession of a tenant whose tenancy has expired. The Court turned down the submission that under the general law applicable to a lessor and a lessee there was no rule or principle which made it obligatory for the lessor to resort to Court and obtain an order for possession before he could eject the lessee. The court quoted with approval the law as stated by a Full Bench of Allahabad High Court in Yar Mohammad Vs. Lakshmi Das (AIR 1959 All. 1,4), "Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause." In the oft-quoted case of Nair Service Society Ltd. Vs. K.C. Alexander and Ors. \026 (1968) 3 SCR 163, this Court held that a person in possession of land in 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. When the facts disclose no title in either party, possession alone decides. The court quoted Loft’s maxim \026 ’Possessio contra omnes valet praeter eur cui ius sit possessionis (He that hath possession hath right against all but him that hath the very right)’ and said, "A defendant in such a case must show in himself or his predecessor a valid legal title, or probably a possession prior to the plaintiff’s and thus be able to raise a presumption prior in time". In M.C. Chockalingam and Ors. Vs. V. Manickavasagam and Ors. \026 (1974) 1 SCC 48, this Court held that the law forbids forcible dispossession, even with the best of title. In Krishna Ram Mahale (dead) by his Lrs. Vs. Mrs. Shobha Venkat Rao \026 (1989) 4 SCC 131, it was held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he

cannot be dispossessed by the owner of the property except by recourse to law. In Nagar Palika, Jind Vs. Jagat Singh, Advocate \026 (1995) 3 SCC 426, this Court held that disputed questions of title are to be decided by due process of law, but the peaceful possession is to be protected from the trespasser without regard to the question of the origin of the possession. When the defendant fails in proving his title to the suit land the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant who has dispossessed him. Such a suit will be founded on the averment of previous possession of the plaintiff and dispossession by the defendant.

It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of he cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram and Ors. Vs. Delhi Administration \026 (1968) 2 SCR 455, Puran Singh and Ors. Vs. The State of Punjab \026 (1975) 4 SCC 518 and Ram Rattan and Ors. Vs. State of Uttar Pradesh \026 (1977) 1 SCC 188. The authorities need not be multiplied. In Munshi Ram & Ors.'s case (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In Puran Singh and Ors.'s case (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase 'settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation

of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession' :

i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession.

In the cases of Munshi Ram and Ors.(supra) and Puran Singh and Ors. (supra), the Court has approved the statement of law made in Horam Vs. Rex \026 AIR 1949 Allahabad 564, wherein a distinction was drawn between the trespasser in the process of acquiring possession and the trespasser who had already accomplished or completed his possession wherein the true owner may be treated to have acquiesced in; while the former can be obstructed and turned out by the true owner even by using reasonable force, the latter, may be dispossessed by the true owner only by having recourse to the due process of law for re-acquiring possession over his property.

In the present case the Court has found the plaintiff as having failed in proving his title. Nevertheless, he has been found to be in settled possession of the property. Even the defendant failed in proving his title over the disputed land so as to substantiate his entitlement to evict the plaintiff. The Trial Court therefore left the question of title open and proceeded to determine the suit on the basis of possession, protecting the established possession and restraining the attempted interference therewith. The Trial Court and the High Court have rightly decided the suit. It is still open to the defendant-appellant to file a suit based on his title against the plaintiff-respondent and evict the latter on the former establishing his better right to possess the property.

The learned counsel for the appellant relied on the Division Bench decision in Sri Dasnam Naga Sanyasi and Anr. Vs. Allahabad Development Authority, Allahabad and Anr. \026 AIR 1995 Allahabad 418 and a Single Judge decision in Kallappa Rama Londa Vs. Shivappa Nagappa Aparaj and Ors. \026 AIR 1995 Karnataka 238 to submit that in the absence of declaration of title having been sought for, the suit filed by the plaintiff-respondent was not maintainable, and should have been dismissed solely on this ground. We cannot agree. Sri Dasnam Naga Sanyasi and Anr.'s case relates to the stage of grant of temporary injunction wherein, in the facts and circumstances of that case, the Division Bench of the High Court upheld the decision of the court below declining the discretionary relief of ad-interim injunction to the plaintiff on the ground that failure to claim declaration of title in the facts of that case spoke against the conduct of the plaintiff and was considered to be 'unusual'. In Kallappa Rama Londa's case, the learned Single Judge has upheld the maintainability of a suit merely seeking injunction, without declaration of title, and on dealing with several decided cases the learned Judge has agreed with the proposition that where the suit for declaration of title and injunction is filed

and the title is not clear, the question of title will have to be kept open without denying the plaintiff's claim for injunction in view of the fact that the plaintiff has been in possession and there is nothing to show that the plaintiff has gained possession by any unfair means just prior to the suit. That is the correct position of law. In Fakirbhai Bhagwandas and Anr. Vs. Maganlal Haribhai and Anr. \026 AIR 1951 Bombay 380 a Division Bench spoke through Bhagwati, J. (as his Lordship then was), and held that it is not necessary for the person claiming injunction to prove his title to the suit land. It would suffice if he proves that he was in lawful possession of the same and that his possession was invaded or threatened to be invaded by a person who has no title thereof. We respectfully agree with the view so taken. The High Court has kept the question of title open. Each of the two contending parties would be at liberty to plead all relevant facts directed towards establishing their titles, as respectively claimed, and proving the same in duly constituted legal proceedings. By way of abundant caution, we clarify that the impugned judgment shall not be taken to have decided the question of title to the suit property for or against any of the contending parties.

No fault can be found with the judgment and decree appealed against. The appeal is devoid of any merit and is dismissed.