

**Ram Singh Vs. Attar Singh**

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**Court :** Delhi

**Decided On :** Jan-23-1985

**Reported in :** 27(1985)DLT226

**Judge :** Sultan Singh, J.

**Acts :** [Specific Relief Act, 1963](#) - Sections 41; [Code of Civil Procedure \(CPC\), 1908](#) - Order 39, Rule 1; [Punjab Land Revenue Act, 1887](#) - Sections 34

**Appeal No. :** Civil Revision Appeal No. 575 of 1984

**Appellant :** Ram Singh

**Respondent :** Attar Singh

**Advocate for Pet/Ap. :** J.R. Singh,; M.S. Vashist and; S.K. Mishra, Advs

**Judgement :**

**Sultan Singh, J.**

(1) This is a revision under section 115 of the Code of Civil Procedure from the judgment and order dated 4th June, 1984 made by the Additional Senior Sub Judge, Delhi by which the learned Judge reversed the order dated 6th January, 1984 of the trial court, and finally rejected the application of the plaintiff in the suit for grant of temporary injunction. However, on admission of the revision, temporary injunction was granted by this court on 25-7-84 restraining the

defendants-respondents from interfering with peaceful possession of the petitioner-plaintiff with respect to one half share of land in suit.

(2) The brief facts are that the land measuring 22 bighas 17 biswas, Khasra Nos. 952, 953, 954 and 1052 min in village Kilokari, Tehsil Mehrauli, New Delhi was owned by a Muslim who migrated to Pakistan and it became an evacuee property. Samman, father of the plaintiff and Hetu, father of the three defendants, were joint non-occupancy tenants in the land since before 1947. After migration of the Muslim owner they continued in possession of the land under the Custodian of Evacuee Property. Samman died in 1963 and Hetu died in 1980. The said land was being cultivated jointly by Samman and Hetu. The plaintiff alleges that after the death of his father, he started cultivating half share of the land towards North lieu of his half share in joint non-occupancy tenancy rights separately and Hetu continued to cultivate the other half towards South, that there is a 'dollar' in between the two portions at the spot, that after the death of Hetu, the defendants in June 1983 threatened to dispossess him and with that view, they started criminal proceedings under Sections 107, 145, 147 Cr.P.C. and 447, 511 Indian Penal Code, that he filed a Criminal Revision which was dismissed by the Additional Sessions Judge. He filed a petition under Section 482 of the Code of Criminal Procedure in the High Court for quashing the criminal proceedings. A local commissioner was appointed by the High Court, who submitted his report dated 15-11-1983 and on 16th November, 1983, H.L. Anand, J. directed that neither of the parties would enter upon the land in dispute, but the parties were at liberty to approach any court of competent jurisdiction in relation to the disputes between them. The plaintiff, therefore, filed the present suit for a decree for permanent injunction restraining the defendants from interfering in his peaceful possession and enjoyment of the half share in the land towards North. Along with the plaint, he filed an application under Order 39 Rules 1 and 2 for the grant of a temporary injunction.

(3) The defendants have pleaded that they have been in possession of the land in suit for the last 30 years, and cultivating the same exclusively, that the so-called dollar as alleged by the plaintiff is a water channel meant for irrigating the land, that after the death of their father, Hetu, they applied for mutation of their names in the

Revenue records, that their possession has been open, hostile and continuous, and they have matured their title as owners by adverse possession. Defendants admit that Samman and Hetu were joint non-occupancy tenants of the land In suit measuring 22 bighas 17 biswas, but allege that Samman stopped cultivating the land in 1953-54 and since then the defendants along with their father have been exercising their exclusive rights over the land in question. The defendants allege that as the plaintiff was threatening to occupy the land forcibly, they were forced to apply on 4-6-83 under Section 145 of the Code of Criminal Procedure to protect their possession, that the criminal revision filed by the plaintiff was dismissed on 17-9-83 and his petition under Section 482 of the Code of Criminal Procedure was dismissed by the High Court on 14-12-1983.

(4) The plaintiff filed certified copies of Khasra Girdawaris for the period October 1963 to March 1971 and October 1980 to October 1983 relating to the land in suit showing that the land had been jointly cultivated by Samman and Hetu up to October 1983. The trial court held that the plaintiff succeeded in establishing a prima facie case on the basis of the Khasra Girdawaris showing Samman and Hetu as cultivators of the entire land and, therefore, restrained the defendants from interfering in the possession of the plaintiff over the half land in suit towards North.

(5) On appeal by defendants, .the Additional Senior Sub Judge vacated the injunction and dismissed the plaintiffs' application for the grant of temporary injunction holding that Khasra Girdawaris appear to have been prepared in routine as name of plaintiff's father appeared therein, although he was dead, that prima facie, plaintiff was never in actual and physical possession of the land, that there was no material in support of the plea of partition, that the police report under Section 107 supported the defendants' plea that they were in exclusive possession of the entire land, that the plaintiff has not taken any steps since 1963 to. get his name mutated in 'place of his deceased father, that the defendants moved application before the Revenue Authorities for mutation of land in their favor after death of their father. The lower appellate court has further observed that the defendants made an offer to the plaintiff to take an oath in a village temple that he had ever been in possession of the suit land, but he kept on avoiding the same.

(6) Learned counsel for the petitioner submits that the lower appellate court has not appreciated the scope of the expression 'prima facie case' and it has prejudged the case by judicial scrutiny of the material on record and held that the plaintiff has no case. He submits that the lower appellate court has acted illegally and with material irregularity in the exercise of its jurisdiction in vacating the order of the Trial Court, that the plaintiff would suffer irreparable injury if the said order is not set aside, that it would result in miscarriage of justice.

(7) The lower appellate court has held that the plaintiff has no prima facie case. A bare reading of the judgment shows that it has decided the entire case on the basis of the existing material on record which is an illegal approach. The phrase 'prima facie case' in plain language signifies that at first impression the plaintiff has a triable case. It means a substantial question to be investigated and if a bonafide contention has been raised between the parties which required a trial the same will constitute a prima facie case unless it is barred by law or the allegations made in the plaint do not entitle the party to the relief claimed. At the time of grant of injunction the court is not required to consider the claim closely or to arrive at a conclusion that the plaintiff was likely to succeed. It has only to see whether the plaintiff has succeeded in bona fide raising a substantial question which needs to be investigated by the court at the trial. The phrase 'prima facie case' is not to be confused with 'prima facie title' which it appears has been done in this case and the court held that the plaintiff had no case.

(8) In *Gopal Krishan Kapoor v. Ramesh Chander*, 1973 R.L.R. 542 it has been observed that 'prima facie case' means the case at first sight or on the face of it so probable that it needs consideration, investigation and determination.' It means bona fide dispute requiring determination without further examining or anticipating the decision in the suit itself. It has been further observed that the court should not prejudge the case by judicial scrutiny of facts pleaded. Proper stage for it is at the conclusion of the trial when the totality of circumstances come before the court. Similar observations were made in *Gurmukh Singh v. M/s. Inderprastha Finance Co.*, 1976 R.L.R. 1 and *Sahab Dayal Chamanlal v. M.C.D.*, 1976 R.L.R. 550

(9) The plaintiff in support of his allegations in the plaint relies on Khasra Girdawaris which is a record of rights. The entries therein are presumed to be true unless contrary is proved as provided in Section 44 of the [Punjab Land Revenue Act, 1887](#) (for short 'the Act') which reads as under :

A Entry made in a record of rights in accordance with the law for the time being in force, or in an annual record in accordance with the provisions of this Chapter and the rules there under, shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefore.'

Section 31 of this Act provides that there shall be a record of rights for each estate and the record shall include the statements showing the persons who are the land owners, tenants, or assignees of Land Revenue in the Estate, the nature and extent of interest etc. etc. Section 33 of the Act provides for maintenance of annual records, Section 34 of the Act provides that any person acquiring by inheritance, purchase, mortgage, gift or otherwise any right in an estate as a land owner, assignee of land revenue or tenant having a right of occupancy, shall report his acquisition of the right to the patwari of the estate. Sections 34 and 35 of the Act are as under :

'34(1) Any person acquiring, by inheritance, purchase or mortgage gift or otherwise, any right in an estate as a land-owner, assignee of land-revenue or tenant having a right of occupancy, shall report his acquisition of the right to the patwari of the estate.

(2) If the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the patwari.

(3) The patwari shall enter in his register of mutations every report made to him under sub-section

(1) or sub-section (2), and shall also make an entry therein respecting the acquisition of any such right as aforesaid which he has reason to believe to have taken place, and of which a report should have been made to him under one or

other of those sub-sections and has not been so made.

(4) A Revenue-officer shall from time to time inquire into the correctness of all entries in the register of mutations and into all such acquisitions as aforesaid coming to his knowledge of which, under the foregoing sub-sections, report should have been made to the patwari and entry made in that register and shall in each case make such order as he thinks fit with respect to the entry in the annual record of the right acquired.

(5) Such an entry shall be made by the insertion in that record of a description of the right acquired and by the omission from that record of any entry in any record previously prepared which by reason of the acquisition has ceased to be correct.

35. The acquisition of any interest in land other than a right referred to in sub-section

(1) of the last foregoing section shall, (a) if it is undisputed, be recorded by the patwari in such manner as the Financial Commissioner may by rule in this behalf prescribe and (b) if it is disputed, be entered by the patwari in the register of mutations and dealt with in the manner prescribed in subsections

(4) and

(5) of the last foregoing section.

Learned counsel for the defendants submits that the Khasra girdawaries have been written in a routine manner as the names of the heirs of Samman, after his death in 1963 do not find place in the Khasra girdawaries. He submits that as the name of the deceased person continues, no reliance can be placed on the entries in Khasra girdawaris. Learned counsel for the plaintiff submits that even if the names of the heirs of Samman have not been entered in the Khasra girdawaries since 1963 it cannot be said that the entries therein are not true. He further submits that Hetu died on 8th October, 1980 and the names of his heirs also do not find place in the Khasra girdawaries copies whereof up to October, 1983 have been filed. Absence of names of the plaintiff and the defendants in Khasra Girdawari may be attributed to the failure to perform duty imposed upon the

Revenue Officer under Section 35 read with subsections (4) and (5) of Section 34 of the Act. Plaintiff cannot be blamed for this lapse of the Revenue Officer. At this stage, the entries in the Khasra Girdawaris are to be presumed to be true unless the contrary is proved specially when defendants admit that Samman and Hetu were joint tenants in the suit land. After their deaths, plaintiff and defendants must be presumed to have inherited the tenancy rights and their rights as joint tenants are protected under the Delhi (Urban Areas) Tenants Relief Act, 1961. Even the landholder cannot dispossess them except on the grounds mentioned in Section 3 of the Delhi (Urban Areas) Tenants Relief Act, 1961.

(10) From the judgment of the lower appellate court it appears that it decided the entire suit by rejecting the entries in Khasra Girdawaris. There is as a matter of fact no other document on record to show that the plaintiff or the defendants have any right in the land in dispute. The rights of the plaintiff and the defendants are only established on the basis of entries in Khasra Girdawaris.

(11) Learned counsel for the defendants submits that the defendants on 7th January, 1982 and 16th December, 1982 made applications to the Revenue authorities requesting for mutation of the land in suit in their favor. A photostat copy of the application alleged to have been delivered to the Revenue Authorities on 7th January, 1982 (Trial Court's record, page 25) does not refer to any of the Khasras of the land in suit. As already stated, the land in suit bears' Khasra Nos. 952, 953, 954 and 1052 min. There is no reference of any of these khasras in the application submitted on 7th January, 1982. The defendants have also filed a photo copy of the application submitted to the authorities on 16th December, 1982 (Trial Court's record, page 27) intimating to the Revenue Authorities that Shri Hetu died on 8th October, 1980 that the land existing in his name in the Revenue Records be transferred to their names, that the entries in Khasra Girdawaris since after 1970 were wrong, that the name of Samman be removed from the Khasra Girdawari. This application refers to Khasra Nos. 952, 953 and 1052 min in dispute. There is no reference of Khasra No. 954. Prima facie, from this application, it appears that the defendants and their mother made an application to the Revenue authorities on 16th December, 1982 for mutation of their names in place of Hetu, deceased, but the learned counsel for the defendants has not

brought to my notice as yet whether any order had been passed by the Revenue Authorities in accordance with sections 34 and 35 of the Act. From this application it is clear that the prayer of the defendants is that the entries in Khasra Girdawari after 1970 onwards only were wrong. Further this application makes a request for mutation of the land registered in Revenue Records in the name of Hetu to the names of the defendants and their mother. A further request is made that the name of Samman be removed from Khasra Girdawari relating to Khasra No. 1051 only which khasra is not in dispute in the present suit.

(12) Learned counsel for the defendants next refers to a police report on the defendants complaint No. 192 dated 31-10-83 to the Assistant Commissioner of Police, Lodhi Colony. This report does not bear any date, but admittedly it has come into existence after disputes have arisen between the parties. A photostat copy of Ibis report is at page 119 of the records of the lower appellate court. A bare reading of it does not inspire any confidence. It appears to have been made at the instance of the defendants. The Inquiry Officer refers to some litigation between Hetu and Asa Nand in the civil court. No copy of any order of civil court has been filed. Learned counsel for the defendants on my asking could not file copy of any such order of court. The Inquiry Officer, I presume, must have noted the alleged suit at the instance of the defendants, but they have been unable to substantiate it. The Inquiry Officer has further written that Samman cultivated this land up to 1953. What was the basis of this knowledge of the Inquiry Officer is not clear. It is contrary to khasra girdawaris. Obviously, it must be at the instance of the defendants. The real dispute in this case is as to what are the rights of the plaintiff and the defendants. It is admitted that the father of the defendants was joint non-occupancy tenant of the land in suit along with Samman, father of the plaintiff.

(13) Counsel for the defendants then refers to an affidavit dated 5th January, 1984 of Attar Singh, defendant wherein he deposes in support of the facts pleaded in the written statement and in the reply to the injunction application. Learned counsel for the plaintiff submits that the defendants filed reply dated 26-12-83 to the application for the grant of temporary injunction without any affidavit in support thereof and the affidavit attached to the reply is neither attested by an Oath

Commissioner nor signed by Attar Singh, defendant. The arguments in the application were heard on 26-12-83 and the matter was adjourned by trial court for judgment to 5-1-1984. It appears that on 5-1-84, the defendants filed an application under section 151 of the Code of Civil Procedure repeating what their counsel had argued before the trial court. Along with the application, they placed on record the affidavit of Attar Singh duly signed by him and sworn before the Oath Commissioner, together with photostat copy of the applications dated 7-1-1982 and 16-12-1982 for mutation alleged to have been made to the Revenue Authorities. He submits that neither copy of the application nor copy of any document was delivered to the plaintiff.

(14) Learned counsel for the plaintiff refers to the order dated 16th November, 1982 of H.L. Anand, J. in Cr.M. (Main) No. 885 of 1983 Ram Singh v. State, where the learned Judge directed the parties not to enter upon the land in dispute and the liberty was given to them to get their disputes settled from any court of competent jurisdiction. The petition of the plaintiff under Section 482 of the Code of Criminal Procedure was dismissed on 14-12-83 and the present suit was filed on 13-12-1983. During the pendency of Cr.M.(M)No. 885/83, Mr. P.P.S. Premi was appointed as local commissioner to report about the actual physical possession. In his report dated 15-11-83, he has stated that it was not possible to determine the physical possession of any person. In his report he has not referred to any water channel at the site as alleged by the defendants.

(15) From copies of the application dated 7-1-82 and 16-12-82, report of the local commissioner dated 15-11-83 and the enquiry report of the police on the complaint of the defendants dated 31st October, 1983. I find that prima facie there is nothing in these documents in support of the case of the defendants. The defendants have pleaded that they have been in exclusive and adverse possession for 30 years, but have not placed on record any prima facie material to substantiate their pleas. On the contrary in their applications submitted to the Revenue Authorities on 7-1-82 and 16-12-82, they claimed their possession on the suit land after 1970 as they prayed for the correction of the Khasra Girdawari for the period after 1970 onwards only. In other words, they admit that the entries in the Khasra Girdawaris up to 1970 were correct, but as already stated, there is presumption of correctness

of the entries in the Khasra Girdawaris under Section 44 of the Punjab Land Revenue Act unless proved to the contrary. Mere absence of names of the heirs of Samman or Hetu in Khasra Girdawaris does not mean that the entries therein are incorrect. Learned counsel for the defendants refers to Gurcharan Singh and others v. Prilhi Singh and others, : AIR 1974 SC223 . It has been observed there that though Khasra Girdawaris is a record admissible under Section 35 and statutory presumption of correctness attaches to the record of rights under Punjab Land Revenue Act, but it does not extend to Khasra Girdawaris. It was held that entries in Khasra Girdawaris were tempered and suspicious. No reliance was, therefore, placed on them.

(16) The defendants admit that Samman and Hetu were joint no occupancy tenant and plaintiff is son of Samman. It is well established that vacant possession of land must necessarily go with title. The possession of one joint tenant is the possession of all and there can be no dispossession by one joint tenant in the absence of ouster of other joint tenant and an assertion of hostile title by him to the knowledge of the other joint tenant sought to be excluded from the joint tenancy.

(17) The defendants have pleaded that they have become owners of land by adverse possession. Joint tenancy of Samman is admitted by the defendants. The possession of defendants however long it might be unless it is adverse, cannot confer on them any right. (See : Maharajadhiraj of Burdwan, UdaychandMahatabChand.SubodhGopal Base and others, : AIR 1971 SC376 ). Moreover, there is no plea of ouster of the plaintiff or his predecessor by the defendants. Prima facie, therefore, it does not appear that defendants have become owners or exclusive tenants by adverse possession. Mere exclusive possession does not constitute adverse possession. The case of the defendants is that they have been in exclusive and adverse possession of the entire land for the last 30 years, but they have not placed any material on record to show even prima facie that they have been in exclusive possession. Prima facie there is also nothing on record to show that the defendants have been in adverse possession of the entire land. On the contrary the Khasra Girdawaris disclose that Samman, Predecessor of the plaintiff, has been recorded as a joint cultivator along with Hetu the predecessor of the defendants up to October, 1983. The defendants and their

mother in the application delivered to Revenue Authorities claimed mutation in their favor with respect to land registered in the name of Hetu. They also claimed correction of Khasra Girdawaris only after 1970. In other words, they admit correctness of entries in Khasra Girdawaris up to 1970. It must, therefore, be held that prima facie the plaintiff is in possession of the land. The onus to prove their adverse possession on entire land is upon the defendants.

(18) The plaintiff, on the basis of allegations in the plaint, Khasra Girdawaris for the period ending October 1983, admission of the defendants that Samman and Hetu were joint non-occupancy tenants of the land, the fact that possession of Samman and Hetu and their heirs as tenants as protected under the Delhi (Urban Areas) Tenants' Relief Act, 1961, the claim of adverse possession by defendants without any material on record so far, has bona fide raised a substantial question of his rights in the land to be investigated during trial of the suit, the claim of the plaintiff on the face of it is not barred by any law but his right is protected by the Delhi (Urban Areas) Tenants' Relief Act, 1961. It is, therefore, held that plaintiff has a prima facie case. If he is dispossessed during pendency of suit, he shall suffer irreparable injury. The balance of convenience is also in his favor as during investigation of the rights of the plaintiff and the defendants by the Court, his possession should be protected.

(19) I am, therefore, of the opinion, in the facts and circumstances of the present case, that the lower appellate court by ignoring the provision of Section 34, 35 and 44 of the Punjab Land Revenue Act acted illegally in the exercise of its jurisdiction. The lower appellate court also acted with material irregularities in determining the prima facie nature of the case. The judgment and order of the lower appellate court is, therefore, set aside and the order of the trial court is restored. The defendants are restrained from disturbing the peaceful possession of the plaintiff with respect to the Northern half portion of the suit land till the decision of the suit. Observations made herein shall not prejudice the pleas of the parties which are subject-matter of the suit. No order as to costs.