

Padhiyar Prahladji Chenaji vs Maniben Jagmalbhai (Deceased) Through ... on 3 March, 2022

Author: M.R. Shah

Bench: B.V. Nagarathna, M.R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1382 OF 2022

Padhiyar Prahladji Chenaji
(Deceased) Through L.R.s

...Appellant(s)

Versus

Maniben Jagmalbhai (Deceased)
Through L.R.s and Ors.

...Respondent(s)

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 24.10.2018 passed by the High Court of Gujarat in Second Appeal No. 8 of 2016 by which the High Court has dismissed the said appeal and has confirmed the judgment and decree passed by the trial court further confirmed by the First Appellate Court granting injunction in favour of the original plaintiff restraining the defendant from disturbing the possession of the plaintiff, the original defendant has preferred the present appeal.

2. That the dispute is with respect to the land bearing Revenue Natarajan Survey No.49 ad-measuring 6 acres and 15 gunthas situated at the village Mahadeviya, District Deesa. The husband of the original plaintiff had executed a Sale Deed dated 17.06.1975 in favour of the appellant herein – original defendant (hereinafter referred to as the “original defendant”) by which he sold his agricultural land in question. 2.1 That on the basis of the sale deed, the name of the defendant No.1 was mutated in the Revenue record in the year 1976 itself. All throughout the name of the original defendant No.1 was mutated in the Revenue record as an owner right from the year 1976 onwards. It is the case on behalf of the defendants that thereafter between 1975 to 1997, he had authorised and completed construction projects on the land. He also availed a bank loan where the suit property was given as a collateral security.

2.2 That in the year 1999, the husband of the original plaintiff, who executed the registered sale deed died. That after a period of approximately 22 years, respondent No.1 herein – original plaintiff (hereinafter referred to as “original plaintiff”) instituted Regular Civil Suit No. 123 of 1997 in the Court of Civil Judge (Junior Division), Deesa for the reliefs of cancellation of the registered Sale Deed dated 17.06.1975, declaration and permanent injunction.

2.3 The case on behalf of the original plaintiff was that her husband was addicted to liquor and as the family was in need of finances, her husband decided to sell 1 acre of the land out of total 6 acres and 15 gunthas to the defendant No.1. According to the plaintiff, defendant No.1 taking advantage fraudulently got the sale deed registered of the entire suit property, i.e., 6 acres and 15 gunthas. Therefore, it was the case on behalf of the plaintiff that the defendant No.1 played a fraud upon her family. According to the plaintiff, the possession of only 1 acre was handed over to the defendant No.1 and the plaintiff continued to be in possession of the remaining 5 acres and 15 gunthas of land. It is the case of the plaintiff, no sooner she came to learn about the alleged fraud and as the defendant No.1 tried to disturb her settled possession in the suit land, she instituted the regular civil suit for the aforesaid reliefs. 2.4 The suit was opposed by defendant No.1. It was the specific case on behalf of the defendant No.1 that he has purchased the entire land, i.e., 6 acres and 15 gunthas under the registered sale deed duly executed by the husband of the plaintiff. It was also the case on behalf of the defendant No.1 that he is in possession of the entire suit land and is cultivating the same since many years. According to the defendant No.1, the plaintiff has no right, title or interest in the suit property. At this stage, it is required to be noted that the plaintiff joined the brothers of her husband as defendant Nos. 2 and 3 against whom as such no reliefs were claimed.

2.5 The trial court framed the following issues:-

“1. Whether the plaintiff proves that her husband had given in writing 1 acre land located on the North from survey no. 49 paiki for construction of well?

2. Whether the plaintiff proves that the defendant no.1 along with defendant no. 2 and 3 got the sale deed of survey no. 49 admeasuring 6 acre - 15 guntha land executed. on 17/6/75 for Rs. 4000/- from her husband falsely?

3. Whether the defendant proves that the husband of plaintiff had sold him 6 acre - 15 guntha land of survey no. 49. by registered sale deed dated 17/6/75 and he has the possession of the land since then?

4. Whether the plaintiff is entitled to get declaration as prayed?

5. Whether the plaintiff is entitled to get the relief sought?

6. What order and decree?” 2.6 On appreciation of evidence, both oral as well as documentary, the trial court partly allowed the suit. The trial court declined to grant the relief of cancellation of the sale deed and declaration and held that defendant No.1 purchased the entire 6 acres and 15 gunthas of the land under the registered

Sale Deed dated 17.06.1975. However, the trial court believed the plaintiff to be in possession of the suit land to the extent of 5 acers and 15 gunthas of land and accordingly granted the relief of permanent injunction.

2.7 Defendant No.1, feeling aggrieved and dissatisfied with the judgment and decree of permanent injunction passed by the trial court, preferred the Regular Civil Appeal No. 15 of 2000 before the First Appellate Court – District Court of Banaskantha at Deesa. The First Appellate Court dismissed the said appeal and confirmed the judgment and decree of permanent injunction passed by the trial court. 2.8 At this stage, it is required to be noted that so far as the judgment and decree passed by the trial court refusing to grant the decree of cancellation of the registered sale deed and refusing to grant declaration of title of the property in her favour attained finality and it was the defendant No.1 who unsuccessfully preferred the appeal before the First Appellate Court challenging the decree of permanent injunction in favour of the original plaintiff.

2.9 Feeling aggrieved and dissatisfied with the judgment and decree passed by the First Appellate Court, defendant No.1 preferred the Second Appeal before the High Court. The High Court framed the following substantial questions of law:-

“(1) Whether in the facts and circumstances of the case. Courts below, particular appellate Court has committed serious error of law in holding that so far as the relief of cancellation of sale deed is concerned, it is barred by limitation and so far as the relief of injunction is concerned, it is not barred by limitation as plaintiff has continuous cause of action for that relief?

(2) Whether in the facts and circumstances of the case, is it possible to draw conclusion about possession of the either party? Whether in arriving at finding as to the possession Courts below have correctly appreciated materials on record or have committed serious error of law?” 2.10 By the impugned judgment and order, the High Court has dismissed the second appeal by observing and holding that the relief of permanent injunction sought by the original plaintiff can be said to be substantive relief and not a consequential relief and therefore, the trial court was justified in granting the permanent injunction in favour of the plaintiff as the plaintiff was/is found to be in possession of 5 acres and 15 gunthas of land out of total area ad-measuring 6 acres and 15 gunthas.

2.11 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court dismissing his second appeal and confirming the judgment and decree passed by the trial court of granting permanent injunction in favour of the original plaintiff, the original defendant No.1 has preferred the present appeal.

3. Shri Pallav Shishodia, learned Senior Advocate appearing on behalf of the original defendant No.1 has vehemently submitted that once the relief relating to declaration as to title of the plaintiff to suit

land is declined, the trial court erred in granting the relief of permanent injunction to protect the alleged “possession” of the plaintiff. 3.1 It is submitted that the permanent injunction sought and granted in favour of the plaintiff is unjust and contrary to Section 38 read with Section 41 of the Specific Relief Act.

3.2 It is further contended that even the relief for permanent injunction was contrary to the evidence on record. It is submitted that as such, right from the execution of the registered Sale Deed dated 17.06.1975, the defendant No.1 is in possession of the entire suit land. It is submitted that right from 1975 in the Revenue record, the name of the defendant No.1 is shown as a cultivator and in possession. It is submitted that even defendant No.1 also availed a bank loan where the suit property was given as a collateral security. It is submitted that even in the registered sale deed, it was specifically mentioned that the full sale consideration has been paid and that the defendant No.1 – purchaser was put in possession of the entire land. It is urged that once the trial court believed the execution of the registered sale deed with respect to the entire land in question and also believed that the full sale consideration with respect to the entire land in question had been paid, the trial court ought to have believed that part of the sale deed in which it was specifically mentioned that possession of the entire land in question was handed over to the defendant No.1. It is submitted therefore that all the Courts have materially erred in believing the possession of the plaintiff with respect to 5 acres and 15 gunthas of land. 3.3 It is further submitted by Shri Shishodia, learned Senior Advocate appearing on behalf of the original defendant No.1, that even otherwise, all the Courts below have materially erred in granting the relief of permanent injunction in favour of the plaintiff. It is contended that once the plaintiff failed to get any relief regarding the declaration as to title and the registered sale deed in favour of the defendant No.1 has been believed, in that case, as the relief for permanent injunction was a consequential relief sought in the suit, the plaintiff shall not be entitled to any protection and/or any injunction protecting her alleged possession. 3.4 It is further submitted that the Courts below have not properly appreciated the fact that once the plaintiff failed to get any relief regarding declaration as to title and the registered sale deed in favour of the defendant No.1 came to be believed, the so called possession of the plaintiff can be said to be unlawful and/or illegal possession and in any case cannot be said to be lawful possession and therefore is not entitled for the permanent injunction as prayed and granted by the trial court confirmed by the High Court.

3.5 It is also submitted that if the suit for declaration was barred by limitation, then the relief seeking permanent injunction was also barred by limitation, as the plaintiff challenged the Sale Deed dated 17.06.1975 after a period of 22 years.

3.6 It is further submitted that after the suit was filed in the year 1997 challenging the sale deed of 1975, the trial court declined the temporary injunction vide order dated 12.12.1997. Thereafter, the First Appellate Court protected the possession of the appellant – defendant No.1 by granting an order of status quo during the pendency of the first appeal, which was further continued even by the High Court vide order dated 21.03.2016. It is submitted that even the order of status quo had been extended by the High Court after the impugned judgment and continued by this Court vide order dated 11.01.2019. It is submitted that the defendant No.1 all along has been in possession and in exclusive possession of the suit land, which stand protected by the judicial orders all throughout in

recognition of the said fact.

3.7 Making the above submissions, it is prayed to allow the present appeal and quash and set aside the judgment and decree passed by the trial court of granting permanent injunction as affirmed by the High Court.

4. Present appeal is vehemently opposed by Shri Rauf Rahim, learned Advocate appearing on behalf of the original plaintiff. 4.1 It is vehemently submitted by Shri Rahim, learned Advocate appearing on behalf of the original plaintiff that as such there are concurrent findings of fact recorded by all the Courts below holding that the plaintiff is in possession of the entire suit land, i.e., 5 acre and 15 gunthas of land. It is submitted that these finding of facts have been recorded by all the Courts below on appreciation of evidence on record, both oral as well as documentary. It is further submitted that as the plaintiff is found to be in settled possession, the only remedy available to defendant No.1 would be to file a substantive suit to get the relief of possession. Reliance is placed on the decision of this Court in the case of Anathula Sudhakar Vs. P. Buchi Reddy, (2008) 4 SCC 594. 4.2 It is submitted that in the suit filed by the plaintiff to protect her possession, defendant No.1 cannot get the relief of possession in his favour. It is submitted that even no counter claim was filed on behalf of the defendant No.1 to protect his possession, if any.

4.3 It is further submitted by the learned Advocate appearing on behalf of the original plaintiff that the plaintiff proved by oral as well as documentary evidence that she is cultivating the suit land in question and that she is in possession of the said land. It is submitted that on the other hand defendant No.1 did not lead any evidence to prove his possession. It is submitted that no evidence was led by the defendant No.1 to prove his possession. It is urged that, once the plaintiff was found to be in possession of the suit land, no error was committed by the trial court granting the relief of permanent injunction and the same is rightly affirmed by the First Appellate Court as well as the High Court. 4.4 It is further submitted by learned Advocate appearing on behalf of the original plaintiff that the High Court has rightly observed that the relief of permanent injunction sought by the plaintiff was a substantial relief and not a consequential relief.

4.5 Making the above submissions, it is prayed to dismiss the present appeal.

5. Heard the learned counsel for the respective parties at length.

6. At the outset, it is required to be noted that the suit filed by the original plaintiff was for cancellation of the registered Sale Deed dated 17.06.1975 and for a declaration that the registered Sale Deed dated 17.06.1975 is bogus and not binding to the plaintiff. While praying for the substantive relief of declaration that the aforesaid sale deed is not binding on her, the plaintiff also prayed for return of the land ad- measuring 1-0 guntha, which even according to the plaintiff was in possession of the defendant No.1. The plaintiff also prayed for permanent injunction with respect to the entire agricultural land ad- measuring 6 acres and 15 gunthas, though even according to the plaintiff also the defendant No.1 was handed over the possession of 1-0 guntha of land out of 6 acres and 15 gunthas of land.

6.1 On appreciation of the entire evidence on record, the trial court refused to pass the decree for cancellation of the registered sale deed and refused to grant a declaration as prayed. Therefore, so far as on the aspect of title of the land in question is concerned, the plaintiff lost. On appreciation of evidence, the trial court held that the husband of the plaintiff executed the registered sale deed in favour of the defendant No.1 for a value consideration. The judgment and order passed by the trial court refusing to grant the decree of cancellation of the registered sale deed and the declaration has attained finality. This is because no appeal was filed by the plaintiff.

6.2 However, the trial court granted the permanent injunction in favour of the plaintiff restraining defendant No.1 from disturbing the possession of the plaintiff with respect to 5 acres and 15 gunthas of land. It was the defendant No.1, who preferred the appeal before the First Appellate Court and thereafter before the High Court challenging the decree for permanent injunction. The High Court by the impugned judgment and order has observed that as relief for permanent injunction, by the plaintiff can be said to be a substantive relief, therefore, when the plaintiff is found to be in possession of 5 acres and 15 gunthas of land, the plaintiff is entitled to the relief of permanent injunction for protecting her possession.

7. Therefore, the short question, which is posed for the consideration of this Court is, whether, in a case where the plaintiff has lost so far as the title is concerned and the defendant against whom the permanent injunction is sought is the true owner of the land, whether the plaintiff is entitled to a relief of permanent injunction against the true owner, more particularly, when the plaintiff has lost so far as the title is concerned and can thereafter the plaintiff be permitted to contend that despite the fact that the plaintiff has lost so far as the title is concerned, her possession be protected by way of injunction and that the true owner has to file a substantive suit claiming the possession.

8. So far as the submission on behalf of the defendant No.1 that even the suit for permanent injunction is barred by law of limitation and the further submission of defendant No.1 that the registered sale deed was executed on 17.06.1975 and immediately thereafter the name of the defendant No.1 was mutated in the Revenue record and thereafter all throughout the name of the defendant No.1 continued in the Revenue record as a cultivator and the suit was filed after a period of 22 years, is concerned, it is true that there are concurrent findings by the trial court as well as the First Appellate Court that the plaintiff is in possession of the disputed land in question. However, it is required to be noted that in the Revenue record, right from 1976 onwards and after the registered sale deed in favour of the defendant No.1, the name of the defendant No.1 was mutated in the Revenue record and in the column of farmer and the cultivator, the name of the defendant No.1 is mentioned. Even the crops being cultivated by the cultivator are mentioned in the Revenue record. Thus, right from 1976 onwards till 1997 in the Revenue record, the name of defendant No.1 is mutated as an owner and cultivator. Nothing is on record to the effect that at any point of time and after the registered sale deed was executed in favour of defendant No.1, the plaintiff paid any revenue in respect of the land in question. After the execution of the registered sale deed in favour of defendant No.1, which has been believed by all the courts below, the name of defendant No.1 was mutated in the Revenue record as an owner and cultivator and the plaintiff, who claims to be in possession of the land and cultivating the same, is deemed to have the knowledge of the said entry.

8.1 In the case of Dilboo Vs. Dhanraji, (2000) 7 SCC 702, it is observed and held by this Court that

where there is a dispute that the suit is filed beyond the period of limitation, the plaintiff would have to aver and prove that the suit is within the period of limitation as prescribed and in the absence of any averment or proof to show that the suit is within time, it is the plaintiff who would fail. It is further observed that whenever a document is registered the date of registration becomes the date of deemed knowledge. It is further observed that in other cases where a fact could be discovered by due diligence then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend the period of limitation by merely claiming that he had no knowledge.

8.2 Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, it is noted that the registered sale deed in favour of defendant No.1 is dated 17.06.1975 and thereafter immediately the name of defendant No.1 – purchaser was mutated in the Revenue record, which continued till the filing of the suit and the name of defendant No.1 is shown as an owner and cultivator and even the crop grown is also shown and when the plaintiff claims that she is in possession and cultivating the land, she would have known the above facts, if she had exercised due diligence and therefore as observed by this Court, the plaintiff(s) can be said to have deemed knowledge of the title as well as possession of defendant No.1. It is to be noted that even in the registered sale deed, it was mentioned that the possession of the entire land in question has been handed over to defendant No.1 – purchaser. At this stage, it is required to be noted that the execution of the registered sale deed and the payment of full sale consideration mentioned in the registered sale deed has been believed and accepted by all the courts below. Therefore, there was no reason for the trial court not to believe the averments in the registered sale deed of handing over the possession to the defendant No.1 – purchaser. The relief of permanent injunction sought by the plaintiff as such was a consequential relief, which shall be discussed herein below.

8.3 Therefore, once the suit is held to be barred by limitation qua the declaratory relief and when the relief for permanent injunction was a consequential relief, the prayer for permanent injunction, which was a consequential relief can also be said to be barred by limitation. It is true that under normal circumstances, the relief of permanent injunction sought is a substantive relief and the period of limitation would commence from the date on which the possession is sought to be disturbed so long as the interference in possession continuous. However, in the case of a consequential relief, when the substantive relief of declaration is held to be barred by limitation, the said principle shall not be applicable.

9. Even otherwise on merits also, the Courts below have erred in passing the decree of permanent injunction restraining the defendant No.1 from disturbing the alleged possession of the plaintiff. Assuming for the sake of argument that the plaintiff is found to be in possession, in that case also, once the plaintiff has lost so far as the relief of declaration and title is concerned and the defendant No.1 is held to be the true and absolute owner of the property in question, pursuant to the execution of the sale deed dated 17.06.1975 in his favour, the true owner cannot be restrained by way of an injunction against him. In a given case, the plaintiff may succeed in getting the injunction even by filing a simple suit for permanent injunction in a case where there is a cloud on the title. However, once the dispute with respect to title is settled and it is held against the plaintiff, in that case, the suit by the plaintiff for permanent injunction shall not be maintainable against the true owner. In such a situation, it will not be open for the plaintiff to contend that though he/she has lost the case so far as

the title dispute is concerned, the defendant – the true owner still be restrained from disturbing his/her possession and his/her possession be protected. In the present case, as observed hereinabove and it is not in dispute that the suit filed by the plaintiff for cancellation of the registered sale deed and declaration has been dismissed and the registered sale deed in favour of the defendant No.1 has been believed and thereby defendant No.1 is held to be the true and absolute owner of the suit land in question. The judgment and decree passed by the trial court in so far as refusing to grant the relief for cancellation of the registered sale deed and declaration has attained finality. Despite the fact that the plaintiff has lost so far as the title is concerned, still the Courts below have granted relief of permanent injunction against the defendant No.1 – the absolute owner of the land in question, which is unsustainable, both, on law as well as on facts. An injunction cannot be issued against a true owner or title holder and in favour of a trespasser or a person in unlawful possession. 9.1 At this stage, the decision of this Court in the case of Jharkhand State Housing Board Vs. Didar Singh and Anr., (2019) 17 SCC 692 is required to be referred to. In the said decision, it is observed and held by this Court that though a bare suit for injunction in the absence of declaration relief would be maintainable and in each and every case where the defendant disputes the title of the plaintiff, it is not necessary that in all those cases, the plaintiff has to seek the relief. It is further observed and held that, however, when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction.

9.2 In the present case, once the defendant No.1 was held to be the true and absolute owner pursuant to the registered sale deed executed in his favour and the plaintiff was unsuccessful so far as the declaratory relief is concerned, thereafter, it cannot be said that there was a cloud over the title of the plaintiff and/or even the defendant. Therefore, the only relief which survived before the trial court was the consideration of relief of permanent injunction and having been unsuccessful in getting the relief of cancellation of the registered sale deed and the declaration thereof, the relief of permanent injunction could not have been granted by the trial court as well as by the first Appellate Court. This aspect of the case has been lost sight of by the High Court in the second appeal. 9.3 In the case of A. Subramanian Vs. R. Pannerselvam, (2021) 3 SCC 675, it is observed by this Court 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. Therefore, the plaintiff is not entitled to any injunction and/or protect his possession against the rightful owner, more particularly, when he fails to get the declaratory relief and the dispute with respect to the title comes to an end.

10. Now, so far as the reliance placed upon the decision of this Court in the case of Anathula Sudhakar (supra) by the learned Advocate appearing on behalf of the original plaintiff in support of his submission that in a suit for permanent injunction to restrain the defendant to interfere with the plaintiff's possession, the only thing the plaintiff will have to establish is that as on the date of the suit, he was in lawful possession of the suit property and the defendant has tried to interfere or disturb his possession is concerned, what is observed by this Court in paragraph 15 is the "lawful possession" of the plaintiff. In the present case the plaintiff, who has failed to get any declaratory relief and the defendant No.1 is held to be a true and absolute owner on the basis of the registered sale deed on payment of full sale consideration thereafter the plaintiff's possession cannot be said to

be “lawful possession”. Therefore, the plaintiff is not entitled to any permanent injunction against the true owner in the instant case.

11. From the impugned judgment and order passed by the High Court, it appears that the High Court has not properly appreciated the distinction between a substantive relief and a consequential relief. The High Court has observed that in the instant case the relief of permanent injunction can be said to be a substantive relief, which is clearly an erroneous view. It is to be noted that the main reliefs sought by the plaintiff in the suit were cancellation of the sale deed and declaration and the prayer of permanent injunction restraining defendant No.1 from disturbing her possession can be said to be a consequential relief. Therefore, the title to the property was the basis of the relief of possession. If that be so, in the present case, the relief for permanent injunction can be said to be a consequential relief and not a substantive relief as observed and held by the High Court. Therefore, once the plaintiff has failed to get any substantive relief of cancellation of the sale deed and failed to get any declaratory relief, and as observed hereinabove, relief of injunction can be said to be a consequential relief. Therefore, the prayer for permanent injunction must fail. In the instant case as the plaintiff cannot be said to be in lawful possession of the suit land, i.e., the possession of the plaintiff is “not legal or authorised by the law”, the plaintiff shall not be entitled to any permanent injunction. 11.1 An injunction is a consequential relief and in a suit for declaration with a consequential relief of injunction, it is not a suit for declaration simpliciter, it is a suit for declaration with a further relief. Whether the further relief claimed has, in a particular case as consequential upon a declaration is adequate must always depend upon the facts and circumstances of each case. Where once a suit is held not maintainable, no relief of injunction can be granted. Injunction may be granted even against the true owner of the property, only when the person seeking the relief is in lawful possession and enjoyment of the property and also legally entitled to be in possession, not to disposes him, except in due process of law.

12. Now, so far as the submission on behalf of the plaintiff that even if the plaintiff failed to get the declaratory relief and relief for cancellation of registered sale deed and her suit for the said reliefs came to be dismissed and the plaintiff is found to be in possession and therefore, the only remedy available to the defendant No.1 would be to file a substantive suit to get back the possession is noticed only to be rejected outright. It is the contention on behalf of the plaintiff that once the plaintiff is found to be in possession, her possession cannot be disturbed except in due process of law and the defendant No.1 though may be the true owner has to file a substantive suit for recovery of possession. While considering the aforesaid submission, the decision of this Court in the case of Maria Margarida Sequeira Fernandes Vs. Erasmo Jack de Sequeira, (2012) 5 SCC 370 is required to be referred to. What is meant by due process of law has been explained by this court in paragraph 79, which reads as under:-

“79. Due process of law means that nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity to the defendant to file pleadings including written statement and documents before the court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated upon by a competent court.” In the said decision, this Court

has approved the following findings of the High Court of Delhi in Thomas Cook (India) Ltd. Vs. Hotel Imperial (2006) 88 DRJ 545 :-

“28. The expressions ‘due process of law’, ‘due course of law’ and ‘recourse to law’ have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed ‘forcibly’ by the true owner taking law in his own hands. All these expressions, however, mean the same thing—ejectment from settled possession can only be had by recourse to a court of law. Clearly, ‘due process of law’ or ‘due course of law’, here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.

Now, this ‘due process’ or ‘due course’ condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the ‘bare minimum’ requirement of ‘due process’ or ‘due course’ of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e. for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the ‘recourse to law’ stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law.” 12.1 Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand and once the rights of the parties are adjudicated and the defendant No.1 is held to be the true owner on the basis of the registered sale deed and on payment of full sale consideration, it can be said that due process of law has been followed and thereafter the plaintiff is not entitled to any permanent injunction against the true owner.

13. In view of the above discussion and for the reasons stated above, all the Courts below have erred in granting permanent injunction in favour of the plaintiff and against the defendant No.1, who is the true owner. After having held that the plaintiff had no title and after dismissing the suit qua the cancellation of the registered sale deed and the declaration, the plaintiff is not entitled to relief of permanent injunction against defendant No.1 – the true owner.

14. In view of the above and for the reasons stated above, present Appeal Succeeds. The judgment and decree passed by the trial court confirmed by the First Appellate Court and the High Court by the impugned judgment and order are hereby quashed and set aside.

Consequently, the suit filed by the plaintiff for permanent injunction against the defendant No.1 stands dismissed. Meaning thereby, the entire suit filed by the plaintiff stands dismissed.

Present Appeal is accordingly Allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

..... J .
[M.R. SHAH]

NEW DELHI;
MARCH 03, 2022.

..... J .
[B.V. NAGARATHNA]