

Settled Possession- Right of Possession Over Immovable Property

written by Riddhi Bose | August 1, 2019



DOWNLOAD PDF

Settled Possession - In the case of *Poona Ram v Moti Ram & Ors*, the bench of Hon'ble Justices Mohan M Shantanagoudar and N.V Ramana of Hon'ble Supreme Court has opined that "a person who asserts possessory title over a particular property will have to show that he is under settled or established possession of the said property. But merely stray or intermittent acts of trespass do not give such right against the true owner". That, the proposition with regards, immoveable property remains that "Possession is nine-tenth of the law". However, it is necessary to observe that there must be an establishment of "settled possession" to establish possessory title claim over an immovable property under Indian Law. Thus, to state that any person having casual possession over the immoveable property will not have possessory title over the said property.

Background - Settled Possession

Respondent Moti Ram had filed a suit over an immoveable property over which he claimed possessory title, which seemed merely based on his prior possession on the property for a number of years. However, Moti Ram had no documents to evidence his possession over the same. The Petitioner, Poona Ram submitted his title deeds to the suit property, having thus claimed a better title to the suit property. The Trial Court decreed the suit in favour of Moti Ram, but the First Appellate Court, reversed the order of Trial Court and held that, Poona Ram in lieu of title deeds had proved his title over the suit property in question. However, in Second Appeal, the High Court of Rajasthan, restored the order of the Trial Court and observed that Poona Ram was not able to prove his title over the property on two grounds: i) claim for a better title, or disposition of Moti Ram's title over the property, ii) Moti Ram not being in possession of suit property, but Moti Ram had possessory title to suit property on the basis of his long term possession. It is on the basis of this observation that Poona Ram approached the Apex Court.

Observation of Apex Court on Settled Possession

The ratio laid down by the Supreme Court in the judgment is that a person who asserts possessory title over a particular property, will have to show he is under settled or established possession of the said property. Therefore, the Supreme Court, in the present case in light of the above submission had to observe that whether Moti Ram had better title over the suit property and whether he was in settled possession of the property, which required dispossession as per law.

The

Apex Court, while addressing the stance under Section 64 of Limitation Act,

wherein a suit for possession of immovable property based on previous possession and not on title, if brought within 12 years from dated of dispossession, opined that such a suit is based on possessory title as opposed

to proprietary possession has also elaborated on the term "settled possession"

holding that such possession over the property which has existed for a long period of time and such effective possession of a person without title would entitle him to protect his possession, similar to that of a true owner.

The

Supreme Court while addressing the issue, took relevance from its earlier judgment in the case of Nair Service

Society Ltd v K.C Alexander, AIR 1968 SC 1165, wherein the 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 the entire world except the rightful owner. In such a case, the defendant must

show in himself, or his predecessor a valid legal title and probably possession

prior to plaintiff's possession.

Thus,

the Court has observed that person who claims to have been in possessory title

over a particular property, may have to show that they have been under settled

or established possession of the said property, however trespass or mere possession won't give any valid right against the true owner. The Court has laid down while reiterating the definition of "settled possession" opined that

"Settled possession means such possession over the property which has existed for a sufficiently long period of time, and has been acquiesced to by the true

owner. A casual act of possession does not have the effect of interrupting the

possession of the rightful owner. 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."

The

Court even went on to observe that the possession should be in the nature of *Animus possidendi*, holding that there

should be an intention to possess. In common law, all that is required is an intention to possess. The same can be observed by reference to the judgment of Powell v McFarlane ((1979) 38 P &

CR 452) wherein the Court had held that "if the law is to attribute possession

of land to a person who can establish no paper title to possession, he must be

shown to have both factual possession and the requisite intention to possess".

The

Court has observed that the plaintiff should prove his case to the satisfaction of the Court and cannot win on the weakness of the case of the defendant. However, as there is no confusion as to the identity of the property in question. The Supreme Court has also stated that the First Appellate Court, being the final court for appreciation of fact has rightly held that Poona Ram, while evidencing his claim of title over the suit property, with the title deed has indeed succeeded in proving a better title to the suit property as against Devi Ram who merely claims casual possessory rights over the suit property. The Apex Court also opined that the High Court should not have gone into the merits of the case nor appreciation of evidence and should not have interfered with the order of First Appellate Court based on evidence on record, which are not perverse or against the material on record.

Possessory Title and Proprietary Title

The difference between Possessory Title as opposed to Proprietary Title has been laid down under the law. Article 65 of Schedule 1 of Limitation Act provides that a person aggrieved may file a suit for recovery of possession of immovable property based on proprietary title, within 12 years from the time when the possession of the defendant is adverse to that of the plaintiff. Article 64 of the Schedule 1 of Limitation Act, provides that person aggrieved may file a suit for recovery of possession of immovable property or any interest therein based on possessory title, within 12 years from the date of dispossession of aggrieved person from the suit property. However, in both cases if the period of 12 years expires and the challenge to title of immovable property is not made, then it amounts to closure of the said right.

The Supreme Court has also observed in this matter that Moti Ram as rightly observed by the First Appellate Court has not been able to prove with any documentary evidence that he was in actual possession of the suit property much less continuous possession. For this the definition of Actual Possession as laid down by the Black's Law Dictionary has to be considered which states that Actual Possession as "having physical control of any object or real property". Therefore, in light of the definition and observance of the Apex Court, it is clear that for the establishment of possessory title over the property, it is fundamental to establish the act of actual possession over suit property and thereafter the plea of continuous possession can be claimed to further the cause of the possessory title. However, the First Appellate Court and then reaffirmed by the Apex Court was right in holding that in the present case, the

defendant Moti Ram, has not been able to prove vide any evidence, the existence of the fact that he was in actual possession of the suit property. Therefore, the Apex Court rightly overruled the judgment of the High Court of Rajasthan for the fact that the Defendant had not made a strong case of possession merely based on the right of casual possession as no documentary evidence was advanced to prove that he may have been in actual possession of the suit property.

Opinion - Settled Possession

Therefore, from the perusal of the existing precedents and the Judgment under review, the following can be observed in case of proving possessory title of a party:

1. Settled possession must be an effective and undisturbed possession;
2. The possession must be to the knowledge of the owner or without any attempt being made by trespasser to conceal the same;
3. The person claiming the possessory title, must prove his own case and prove a title better than that of the person against whom the relief is claimed;
4. The claim of the party claiming possessory title cannot succeed in the weakness of the case of the party against whom the relief is claimed.

Lastly, the better title to the suit property must be proved by passing the trial of settled or established possession by showing an intention to possess the suit property with a intention of subsequent possession for a sufficient period of time, within the knowledge of the owner of the suit property.



Contributed By - Riddhi Bose
Designation - Associate