

A WALTER LOUIS FRANKLIN (DEAD) THROUGH LRS.
v.
GEORGE SINGH (DEAD) THROUGH LRS.

NOVEMBER 27, 1996

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Specific Relief Act, 1963 : Section 38.

C *Suit filed by appellant restraining respondent from interfering with his possession and enjoyment of land—Respondent pleaded that his predecessor in title had purchased the land and that no perpetual injunction could be granted against him, he being a true owner—Trial Court and Appellate Court found that appellant was in possession and enjoyment of disputed property and accordingly granted perpetual injunction—High Court set aside the decrees of Courts below—Appeal—Held, in the sale deed executed by the*
D *respondent's vendor there was a clear recital, which binds the respondent, that the appellant was in possession of the disputed property—It was specifically stated that it would be open to the respondent to obtain possession from the appellant, if he could—Admittedly, the respondent had not filed any suit or possession of the property—On the other hand, the appellant filed the suit for*
E *perpetual injunction—Therefore, the trial Court and the appellate Court have rightly granted the perpetual injunction—The High Court was not right in reversing that finding.*

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 249 of 1981.

From the Judgment and Order dated 13.11.80 of the Allahabad High Court in S.A. No. 1252 of 1973.

Pramod Swarup, for the Appellants.

G R.D. Upadhyay and G.G. Upadhyay for the Respondents.

The following Order of the Court was delivered :

H This appeal by special leave arises from the judgment of the learned single Judge of the Allahabad High Court, made in Second Appeal No.

1252/73 dated November 30, 1980. The appellant had filed the suit for perpetual injunction to restrain the respondent from interfering with his possession and enjoyment of 10 feet/65 feet land towards east of his house No. 15/45 situated in Kanpur. According to him, he purchased the plot No. 15/45 from the Church under a sale deed in year 1937 and ever since has been in possession and enjoyment of his property. He had enclosed the disputed property by putting up a wall using it for poultry farming and during summer for sleep in the open area. It is also his case that he had paid najrana to the Church and became its owner. The plea of payment of najrana and of becoming owner was given up. The respondent has pleaded that the respondent's predecessor in title by name S.W. Lawrence had purchased plot No. 15/44 from the church in 1965, and as owner of the property, was in enjoyment of the property. He later on claimed to have purchased plot No. 15/43. He contended that no perpetual injunction could be granted against him, he being a true owner. Both the trial Court and the appellate Court found that the appellant was in possession of the disputed property and in enjoyment thereof; they also held that he perfected title by prescription. The High Court has set aside the judgments and decrees of the courts below on the finding that the appellant had not proved his adverse possession as against the respondent. Mere continuous possession does not constitute adverse possession. Therefore, the courts below are not right in finding that he was in adverse possession.

It is not necessary to go into that question of adverse possession for the reason that the suit itself was for perpetual injunction. It is also an admitted position that in the sale deed executed by the respondent's vender, i.e., S.W. Lawrence, there is a clear recital, which binds the respondent, that the appellant was in possession of the disputed property. Though he had purchased it from the Church, he could not take its possession from the appellant. It was specifically stated that it would be open to the respondent to obtain possession from the appellant, if he could. Admittedly, the respondent had not filed any suit for possession of the property. On the other hand, the appellant filed the suit for perpetual injunction to restrain the respondent from interfering with his possession of the property. In view of the admission in the title deed obtained by the respondent himself and a concurrent finding recorded by the courts below that the appellant has been in possession, the injunction shall follow. Under these circumstances, the trial Court and the appellate Court have rightly

A granted the perpetual injunction. The High Court is, therefore, not right in reversing that finding.

The appeal is accordingly allowed. The judgment and decree of the High Court stand set aside and that of the trial Court and the appellate Court confirmed. No costs.

B

T.N.A.

Appeal allowed.