

**APPELLATE CIVIL.***Before Addison and Din Mohammad JJ.***SECRETARY OF STATE (PLAINTIFF) Appellant***versus***LABHA RAM AND OTHERS (DEFENDANTS)****Respondents.****Civil Appeal No. 1362 of 1933.**

*Suit for possession — by owner of land, encroached and built upon by defendant — whether Court can refuse possession and give money compensation instead.*

The defendants encroached upon the plaintiff's land and built upon it with full knowledge of the claim of the plaintiff. The trial Court decreed the suit for possession of the land but, on appeal, the District Judge held that it would not be equitable to give the plaintiff the land, though it belonged to him, because this would entail loss to the defendants, and, referring to certain cases dealing with mandatory injunctions, held that the plaintiff was merely entitled to monetary compensation.

*Held*, that the principles governing a suit for possession were quite different from those governing a suit for a mandatory injunction and that in a suit for possession the plaintiff was entitled to stand upon his strict rights and the question of delay in suing or money compensation did not arise.

*Rahmat Ullah Khan v. Secretary of State* (1), and Civil Appeal No. 1710 of 1927, relied upon.

*Second appeal from the decree of R. B. Lala Rangil Lal, Additional District Judge, Lahore, dated 17th June, 1933, reversing that of Lala Diwan Chand, Subordinate Judge, 1st Class, Lahore, dated 23rd December, 1929, and granting the plaintiff a decree for Rs.210.*

**DIWAN RAM LAL**, Government Advocate, for Appellant.

**J. G. SETHI**, for Respondents.

The judgment of the Court was delivered by—

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ADDISON J.—The Secretary of State sued the defendants for possession of 15 *marlas* and 95 square feet of land encroached upon by them when building a factory in Kasur. The trial Court gave the plaintiff a decree for possession of the land sued for and at the same time directed the demolition of that portion of the building which stood on it. The defendants appealed. The Additional District Judge, Lahore, held that the encroachment amounted to 11 *marlas* only. He further said that it was not equitable to give the plaintiff the land, though it belonged to him, because this would entail loss to the defendants. He, accordingly, assessed the land at Rs.30 per *marla* and gave the plaintiff a decree for Rs.330 by way of compensation. There was an appeal from this decision by the Secretary of State to this Court. It was accepted and the whole appeal sent back to the District Judge for re-decision.

The Additional District Judge has now come to the conclusion that only 7 *marlas* have been encroached upon. He discussed certain rulings about compensation being awarded in cases of mandatory injunctions and came to the conclusion that the plaintiff was merely entitled to monetary compensation for the area of 7 *marlas* which the defendants had encroached on. He was of opinion that Rs.30 per *marla* was sufficient and gave the plaintiff a decree for Rs.210. The Secretary of State has again preferred this second appeal.

There is evidence that, immediately after the defendants started building, the Crown authorities took action. Building commenced in October, 1925, and on the 23rd November, 1925, the defendants put in a petition admitting that they had included about 7

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*marlas* of Government land in their factory and that the land should be sold to them. The Crown authorities did not agree to this. An Advocate appeared before the Sub-Divisional Officer on the 6th January, 1926, and stated that the defendants did not want to usurp the plaintiff's land and that they were prepared to stop their building operations and to abide by the result of measuring the land: if it was found that they had encroached, the Advocate stated that they were willing to pay compensation or give up the land. Upon this the Sub-Divisional Officer tried to get Munshi Ram, who was acting on behalf of the defendants, to appear before him, but he refused to appear. The Crown persisted in its attempt to stop the building, so much so that in February, 1927, the defendants served the Secretary of State with a notice under section 80 of the Civil Procedure Code that they proposed to sue him for a declaration as regards the land. In spite of this they did not institute a suit, thus compelling the Secretary of State to sue in February, 1928.

It will be obvious from what has been said that soon after the defendants started building they admitted the encroachment, that the Crown authorities throughout tried to stop building on the land claimed by them and that in spite of the efforts of the Crown the defendants proceeded to build. There was no delay on the part of the Secretary of State and the defendants built with full knowledge of the claim and, in fact, admitted at one stage that they had encroached to a certain extent.

The lower appellate Court has purported to follow certain rulings to the effect that the jurisdiction to grant a mandatory injunction should be exercised

with caution and should be strictly confined to cases where the remedy for damages is inadequate for the purposes of justice. This was a clear mistake on the part of the lower appellate Court. The suit was not for a mandatory injunction, but was a simple suit for possession to which the principles in question did not apply. This case, in fact, is on all fours with *Rahmat Ullah Khan v. Secretary of State* (1), where it was held that in a suit for possession the plaintiff was entitled to stand upon his strict rights. This view was also taken in Civil Appeal No.1710 of 1927, decided on 12th January, 1928. The question of delay in suing does not arise and even if it did, there was no delay. The defendants pretended to enter into negotiations which failed and they stated that they were going themselves to sue. When they did not sue, the Secretary of State came into Court. There was thus no reason in the present case why a decree for possession of 7 *marlas* encroached upon should not have been given to the plaintiff.

The question of compensation does not arise, but obviously the land is worth much more than Rs.30 per *marla*. The Commissioner, before whom most of the evidence as to value was taken, held that the proper price was Rs.275 per *marla*. In ground No.6 of their appeal to the District Judge the defendants stated that Government had been selling neighbouring plots from Rs.100 to Rs.120 per *marla*. It is difficult, therefore, to see how the figure of Rs.30 per *marla* was arrived at, but this subject need not be further pursued as in our judgment a decree for possession must be given to the plaintiff.

The learned Government Advocate tried to attack the finding of fact as to the encroachment being only

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(1) 63 P. R. 1913.

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7 *marlas*. This was, however, not possible in second appeal as it cannot be said that there is no evidence on which this finding is based.

For the reasons given, we accept the appeal and grant the plaintiff a decree for possession of the 7 *marlas* of land encroached upon. At the same time, we direct the demolition of any portion of the building which stands on the land decreed. The seven *marlas* will be that portion of the plot shown in red in Exhibit Z which is nearest to the *kucha* (or lane) on the east. The executing Court should make up the seven *marlas* by giving the plaintiff a strip of uniform width, the boundary away from the lane being parallel to the boundary of the lane. As the finding of fact was that only seven *marlas* have been encroached upon, we leave the parties to bear their own costs throughout.

P. S.

*Appeal accepted.*

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