

**HIGH COURT OF GUJARAT**

**RAMSHREE MAHAVIR  
V/S  
GIRDHARILAL BHOLANATH AGARWAL**

**Date of Decision:** 09 December 1969

**Citation:** 1969 LawSuit(Guj) 84

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**Hon'ble Judges:** [M P Thakkar](#)

**Eq. Citations:** 1970 GLR 971

**Case Type:** First Appeal

**Case No:** 1033 of 1969

**Subject:** Civil, Contract

**Head Note:**

**Court can not - uphold a right in favour of a person who dispossess by use of force - If permitted a violent conflict- injunction must be granted in such cases.**

**In a civilization where the rule of law obtains it is difficult to envisage a Court of law upholding any such right in favour of a person who claims right to dispossess by use of force without recourse to due process of law. If this were to be permitted there would be a violent conflict between persons claiming individual rights. There is no manner of doubt that no such right can be claimed by the defendant regard less of the question whether or not the plaintiff himself has any right to remain in possession. Once it is established by the plaintiff that he is in exclusive possession and it is admitted by the defendant that he is in such possession an injunction restraining the defendant from dispossessing the plaintiff by force must issue as a matter of course more readily if the defendant persists in asserting the claim that he has a right to take the law in his own hands**

and forcibly dispossess the plaintiff. (Para 2) Lallu Yeshwant Singh v. Rao Jagdish Singh & ors. referred to.

**Acts Referred:**

[Specific Relief Act, 1963 Sec 38](#)

**Final Decision:** Appeal allowed

**Advocates:** [K S Nanavati](#), [I M Nanavati](#), [R N Shah](#)

**Reference Cases:**

[Cases Cited in \(+\): 9](#)

[Cases Referred in \(+\): 1](#)

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**Judgement Text:-**

Thakkar, J

[1] The question raised in this appeal directed against the judgment of the learned Judge of the City Civil Court presiding over Court No. II is whether a person in actual and exclusive possession of a premises can be allowed to be dispossessed forcibly by another person claiming that he has the legal right to the possession of the premises and that the person in actual possession has none. If the person threatened with violent dispossession without recourse to due process of law seeks the aid of the Court of law by way of a 'quartum' action to restrain the party threatening to take the law in his own hands and to violently dispossess the otherside, can the Court refuse such a request? Such is the problem posed in this appeal. A few facts need to be stated in order to understand the back-ground. Appellant-plaintiff Ramashree Mahavir instituted Civil Suit No. 1559 of 1967 on the allegation that he was in exclusive possession and peaceful enjoyment of suit premises where he was running his Pan Shop. It was contended by the plaintiff that defendant Girdharilal Bholanath Agarwal was threatening to take the law in his own hands and to forcibly dispossess the plaintiff of the suit premises without recourse to due process of law. On these allegations the plaintiff commenced the said suit and prayed for an injunction restraining the defendant from forcibly dispossessing him of the suit premises. The stand taken by the defendant-respondent, inter alia, was that the plaintiff had no legal right to remain in possession of the premises in question, and that, therefore, he was not entitled to the relief claimed by him. It may be mentioned

that having raised the relevant plea in his written statement the defendant remained absent and the suit proceeded ex-parte. It appears that even his learned advocate did not remain present to assist the Court. The plaintiff's evidence was recorded on August 19, 1969. Defendant did not lead any evidence. The matter was fixed for arguments. Arguments were addressed on behalf of the plaintiff on August 18 and 19. The defendant and his advocate remained absent throughout. The learned trial Judge dismissed the plaintiff's suit taking the view that the plaintiff had no legal right to remain in possession and, therefore, could not claim immunity from being forcibly dispossessed. Thereupon the plaintiff has preferred the present appeal against the judgment and decree of the learned Judge passed on August 20, 1967 dismissing the suit.

**[2]** In this Court also the learned Counsel for the respondent-defendant has vehemently argued that the defendant is entitled to take the law in his own hands and forcibly dispossess the plaintiff of the premises in his possession inasmuch as the plaintiff is in no better position than a trespasser. Therefore, the principal question that arises for consideration is as to whether a person in exclusive possession of a property can be forcibly dispossessed by a party alleging that the person in possession has no legal right or title to remain in possession thereof. To me it appears that it is impossible to argue that a party has any such right to resort to physical violence or to forcibly dispossess a person in exclusive possession of a property regardless of whether or not he is able to establish a legal right to remain in possession thereof. To accede to the argument of the learned Counsel for the defendant-respondent is to accept the proposition that we are not governed by a rule of law at all. To uphold the contention of the defendant would be tantamount to giving a licence to persons to take law in their own hands. And the rule of jungle will prevail instead of the rule of law. The question as to whether or not the person in possession has legal right to remain in possession is totally immaterial. If the present plaintiff has no such right it is open to the defendant to institute a suit for possession on the premise that he is a trespasser and he has no right to remain in possession of the suit premises. The question, however, is whether one can circumvent the procedure established by law and take recourse to physical violence and dispossess the person in possession by use of force. In a civilization where the rule of law obtains, it is difficult to envisage a Court of law upholding any such right in favour of a person who claims right to dispossess by use of force without recourse to due process of law. If this were to be permitted there would be a breach of peace everyday and there would be a violent conflict between persons claiming individual rights. There is no manner of doubt in my mind that no such right can be claimed by the defendant

regardless of the question whether or not the plaintiff himself has any right to remain in possession. Once it is established by the plaintiff that he is in exclusive possession and it is admitted by the defendant that he is in such possession, an injunction restraining the defendant from dispossessing the plaintiff by force must issue as a matter of course. More readily, if the defendant persists in asserting the claim that he has a right to take the law in his own hands and forcibly dispossess the plaintiff as has been done in the present case. The learned Counsel for the respondent-defendant has not been able to cite any decision where any such right has been recognized by Courts of law. Reliance was placed by the learned Counsel for the respondent-defendant on a decision of this Court rendered in Civil First Appeal No. 820 of 1960 decided on November 25, 1968 by Divan & V. R. Shah JJ. I do not find any observations in the said decision which support the proposition canvassed by the learned Counsel. In that case, on a perusal of the judgment, it is clear that the plaintiffs had come to the Court after they were dispossessed and after their effects were already removed by the Municipal Authorities. The approach to the Court was made by the plaintiffs after they were forcibly dispossessed and not before the dispossession took place. In the present case the plaintiff has come to the Court at the point of time when the defendant has as yet not dispossessed him of the suit premises. Reliance is also placed by the learned Counsel on Lallu Yeshwant Singh (dead) by his legal representative v. Rao Jagdish Singh and others, A. I. R. 1968 S. C. 620. I am afraid that decision instead of helping the learned Counsel for the respondent runs counter to the argument addressed by him. This will be clear from the following passages of the said decision: -

"(5) The Board of Revenue was of the view that in case land revenue remains in arrears, the right of a tenant gets extinguished under sec. 82 of the Qanoon Ryotwari, but nevertheless the possession of the tenant whose right has been so extinguished is not put to an end automatically, and the tenant must be legally dispossessed. The Board observed.

"This is a general principle of law that no act can be done by the strength of one's own hands but help of the law should be taken and the procedure which is prescribed for that act must be acted upon. In this case the petitioner has not obeyed any law regarding the dispossession of the opponent after the plaintiff lost his right and he himself went there and took possession."

The Board was further of the view that action for dispossession should have been taken according to sec. 137 of Qanoon Ryotwari, extracted above.

(7) It Secms to us that on a true interpretation of the statutory provisions, extracted above, the Board of Revenue came to the correct conclusion, under sec. 82(3) Qanoon Ryotwari, the right of a Khatedar is extinguished if the Khatedar keeps in arrears the land revenue of his khata but there is no automatic extinguishment of his right because sec. 137 of Qanoon Ryotwari enables the Collector to accept arrears if the khatedar is a good payer (khushdehanda) and there are special reasons beyond his control for not paying the land revenue. The existence of the proviso instead of assisting the landlord's contentions assists the tenant's case because if the reasoning of the High Court is accepted to be correct, the proviso would become a dead letter for in every case where there are arrears of land revenue, the landlord would take possession forcibly without trying to recover land revenue under sec. 137. Further sec. 363 of Qanoon Ryotwari clearly provides for suits of the nature described in sec. 326 of Qanoon Mai. When we turn to sec. 326, it is very similar to sec. 9 of the Specific Relief Act, 1877 and it Secms to us that the words "disturbed unlawfully" in sec. 326 mean "disturbed not in due course of law. " Otherwise, there is no reason why a shorter period of limitation and summary "procedure is provided in sec. 326 while sec. 325 provides a longer period of three years for a suit for possession. "

**[3]** The learned Counsel for the respondent invites me to examine the question as to whether the plaintiff had any legal right to remain in possession of the premises in question. I do not think it is necessary for the purpose of the present appeal to examine that question. Whether or not the plaintiff has any such right, there is no manner of doubt in my mind, the plaintiff cannot be forcibly dispossessed by the defendant by taking the law in his own hands without recourse to the machinery provided by law. Under the circumstances, the appeal must be allowed with costs throughout. The plaintiff's suit will be decreed and an injunction will issue restraining the defendant from dispossessing the plaintiff except by recourse to due porcess of law that is to say except under an order of a competent Court and except by executing such decree or order through the machinery of Court.

Appeal allowed.

