

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****205****RSA No.1493 of 1995****Date of Decision : 30.05.2024**

Hakam Singh and Others

....Appellants

VERSUS

Karnail Singh and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. J.S. Brar, Advocate for the appellants.

Mr. Ashwani Talwar, Advocate for respondent No.1.

Mr. H.R. Bhardwaj, Advocate for respondent No.2.

None for respondent No. 3.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the defendant-appellants challenging the judgment and decree dated 25.04.1995 passed by the First Appellate Court.

2. The brief facts relevant to the present *lis* are the plaintiff-respondent No.1 herein filed a suit for declaration as well as for permanent injunction against the defendant-appellants herein on the ground that he had become owner in possession of the suit land by way of adverse possession and that the defendant-appellants be restrained from interfering or dispossessing him from the suit land. The suit was contested by the defendant-appellants herein on the ground that the plaintiff-respondent No.1 had forcibly taken possession of the suit land in the year 1981. It was further

the stand taken that the plaintiff-respondent No.1 was a tenant at will. The handing over of the possession of the suit land by the father of the defendant No.11 to plaintiff-respondent No.1 was also denied. Defendant No.12 filed written statement admitting the claim of plaintiff-respondent No.1.

3. On the basis of pleadings of the parties the following issues were framed :

1. Whether the plaintiff is in possession openly, peacefully and in hostility due to which he has become owner by way of adverse possession as alleged ? OPP
2. Whether the plaintiff is entitled to injunction and declaration as prayed for ? OPP
3. Whether the suit in present form not maintainable in view of the preliminary objection raised in written statement of defendants No.1 to 11 ? OPD
4. Relief.

4. The Trial Court vide judgment and decree dated 04.05.1993 decreed the suit for permanent injunction and dismissed the suit as far as the declaration was concerned. Aggrieved by the same, an appeal was preferred by the plaintiff-respondent No.1, which was allowed vide judgment and decree dated 25.04.1995. Hence, the present regular second appeal by the defendant-appellants.

5. Learned counsel for the defendant-appellants would contend that in all the revenue documents as well as the jamabandis, the plaintiff-respondent No.1 has been shown as a tenant on payment of 1/3rd Batai. Even

in the jamabandi for the year 1982-83 (Ex.P4), which is the basis for filing of the suit, the plaintiff-respondent No.1 is shown to be a tenant on payment of 1/3rd Batai. Learned counsel for the defendant-appellants would further contend that once in the column of rent it has been stated in the jamabandis that the plaintiff-respondent No.1 was paying the 1/3rd Batai the question of adverse possession would not arise. Learned counsel for the defendant-appellants has not disputed the fact that as per the revenue record the plaintiff-respondent No.1 is shown to be in possession of the suit property.

6. *Per contra* learned counsel for the plaintiff-respondent No.1 would contend that the defendant-appellants have no right, title or interest in the suit property and they have not been able to show as to how they became owners of the suit property. It is further the contention that the plaintiff-respondent No.1 has been shown to be in possession in all the revenue records. However, it has been contended that mention of 1/3rd Batai has wrongly been depicted and in the jamabandis subsequent to filing of the suit no Batai has been mentioned. However, learned counsel for the plaintiff-respondent No.1 has candidly admitted that none of the said jamabandis form part of the record. Learned counsel for the plaintiff-respondent No.1 has further contended that the plaintiff-respondent No.1 had only filed the suit for permanent injunction because the defendant-appellants were interfering in his possession

7. Heard.

8. In the present case the plaintiff-respondent No.1 came to Court by filing a suit against the defendant-appellants on the ground that he had

become owner of the suit property by way of adverse possession. When a suit is filed on the basis of adverse possession, the defendant-appellants would be deemed to be the owners of the suit property. The suit is both for declaration as well as for permanent injunction. Dealing with the argument of learned counsel for the plaintiff-respondent No.1 that the defendant-appellants have not been able to show as to how they are owners of the suit property, the same cannot be accepted. It is the plaintiff-respondent No.1 who had come to Court alleging that he had become owner of the suit property by way of adverse possession. Once the suit was filed by the plaintiff-respondent No.1 claiming himself to be the owner of the suit land by way of adverse possession means that the ownership of the defendant-appellants was admitted by him. Had it been otherwise, the suit for declaration would not have been filed. During the course of arguments learned counsel for the plaintiff-respondent No.1 has stated that the declaration is regarding the general public. This plea also deserves to be rejected inasmuch as the general public was never made a party. Possession once claimed to be adverse can only be adverse qua the true owner. If the defendant-appellants were not the true owners there was no question of seeking the declaration qua adverse possession. Learned counsel for the defendant-appellants has contended that the jamabandis placed on the record depict that the plaintiff-respondent No.1 is in possession as a tenant on payment of 1/3rd Batai. No document on the record is forthcoming to depict otherwise. Even the jamabandi, on the basis of which the suit was filed, depicts the plaintiff-respondent No.1 as a tenant on payment of 1/3rd Batai.

That being so, in the absence of any proof of having become owner by way of adverse possession, the judgment and decree of the First Appellate Court to the extent of granting a declaration that the plaintiff-respondent No.1 had become owner by way of adverse possession cannot be sustained. However, the judgments and decrees passed by the Trial Court and the First Appellate Court qua possession are upheld in view of the evidence which has come on the record regarding the possession of the plaintiff-respondent No.1.

9. In view of the above, the judgment and decree of the First Appellate Court is set aside qua the declaration. The finding that plaintiff-respondent No.1 is in possession is however upheld and he would not be dispossessed except in due course of law. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

30.05.2024
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO