

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 7879 of 2013
Date of Decision: 27.3.2015.**

Dr. Mohinder Kumar

.....Petitioner

Versus

Jaspal Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Amarjit Markan, Advocate
for the petitioner.

Mr. Tejinder Pal Singh, Advocate
for the respondents.

SABINA, J.

Petitioner has filed this petition challenging the order dated 13.12.2013 (Annexure P-1) whereby, although, application moved by the petitioner to withdraw the relief of declaration, was allowed but permission to take up the plea of adverse possession in the suit filed by the defendant, was disallowed.

Learned counsel for the petitioner has submitted that petitioner had filed suit for declaration that he had become owner in possession of the suit property on the basis of adverse possession and writing dated 9.3.1981. During the pendency of the said suit, respondents also filed a suit against the petitioner for possession. Since as per the decision of the Apex Court in '**Gurudwara Sahib versus Gram Panchayat Village Sirthala and another, 2013(4) R.C.R. (Civil) 703**, plea of adverse

possession could be only taken in defence and suit could not be filed seeking declaration on the basis of adverse possession, petitioner moved an application that he may be permitted to withdraw the relief of declaration on the basis of adverse possession qua the property in question. However, petitioner was liable to be granted liberty to enable him to take up the plea of adverse possession in his written statement in the suit filed by the defendants i.e. Annexure P-3.

Learned counsel for the respondents, on the other hand, has opposed the petition.

The facts in the present case are not in dispute. Petitioner has been granted permission to withdraw the relief of declaration on the basis of adverse possession vide the impugned order dated 13.12.2013 (Annexure P-1). The Trial Court should have granted the liberty to the petitioner to take up the plea of adverse possession in his written statement in the suit filed by the defendants. Petitioner has already taken the plea of adverse possession in the written statement filed by him in the suit filed against him by the defendants.

It has been held by the Apex Court in '**Gurudwara Sahib versus Gram Panchayat Village Sirthala and another, 2013(4) R.C.R. (Civil) 703**, as under:-

“7. In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable. There cannot be any quarrel to this extent the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to

the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.

8. *x x x x x*

9. *As the appellant is in possession of the suit property since 13.4.1952 and has been granted the decree of injunction, it obviously means that the possession of the appellant cannot be disturbed except by due process of law. We make it clear that though the suit of the appellant seeking relief of declaration has been dismissed, in case respondents file suit for possession and/or ejectment of the appellant, it would be open to the appellant to plead in defence that the appellant had become the owner of property by adverse possession. Needless to mention at this stage, the appellant shall also be at liberty to plead that findings of issue No.1 to the effect that the appellant is in possession of adverse possession since 13.4.1952 operates as res-judicata. Subject to this clarification, the appeal is dismissed.”*

Thus, in view of the above decision of the Apex Court, the petitioner could not have filed the suit seeking declaration that he be declared owner of the property in question on the basis of adverse possession. However, petitioner can take up the plea in defence in a suit filed against him.

In these circumstances, the impugned order dated 13.12.2013 (Annexure P-1) is modified to the extent that petitioner would be at liberty to take up the plea of adverse possession in the

suit filed by the defendants against him i.e. Annexure P-3.

Petition stands disposed of accordingly.

**(SABINA)
JUDGE**

March 27, 2015
Gurpreet