

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No. 2460 of 1988

Date of decision : March 17th, 2015

Sharamjit Singh (deceased) through LR's

....Appellants

versus

Bahadur singh and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present: Mr. Rakesh Gupta, Advocate, for the appellants

Mr. SC Pathela, Advocate for respondents no. 1, 4 to 10,
13, 20,24,25,28,29,31,33,41,50,50A, 50B

Mr. VK Kataria, Advocate, for respondent nos. 15, 51, 53 & 55

Fateh Deep Singh, J. (Oral)

The appellants who were the plaintiffs before the trial court having failed to secure a favourable decision as by virtue of judgment and decree dated 5.1.1985 learned Sub Judge III Class, Bathinda dismissed their suit followed by dismissal of their appeal through judgment and decree dated 1.8.1988 by learned Additional District Judge, Bathinda have come up before this Court.

I have heard Mr. Rakesh Gupta, Advocate, for the appellants,

Mr. SC Pathela, Advocate for respondents no. 1, 4 to 10,13, 20,24,25,28,29,31,33,41,50,50A, 50B and Mr. VK Kataria, Advocate, for respondent nos. 15, 51, 53 & 55 and perused the records.

The plaintiffs filed against defendants numbering 64 a suit by way of decree for possession in respect of land bearing khasra no. 5110/4381 measuring 11 bighas 18 biswas situated in Patti Jhooti, Bathinda duly described and depicted in the head note of the plaint claiming that they were the owners of the property in question and that in their absence the defendants have illegally trespassed and taken forcible possession thereof and hence the suit in question.

The united stand of the defendants is of total denial claiming that they were in legitimate possession since time immemorial over which they have raised constructions and thus their adverse possession has matured into ownership and sought dismissal of the suit.

The learned trial court framed the following issues:-

- “1 Whether the plaintiffs are co-sharer in the suit property to the extent of 2/5th share as pleaded in the plaint?OPP
2. Whether suit is bad for non-joinder of necessary parties?OPD
3. Whether the suit is bad for mis-joinder of causes action?OPD
4. Whether the suit has not been valued properly for the purposes of court fee and jurisdiction?OPD

5. Whether defendants have become owner of the suit property by way of adverse possession as pleaded in para no. 6 of written statement?OPD

6. Relief.”

The plaintiffs examined one of the plaintiffs and proved documents Exs. P1 to P3. Defendants examined 11 witnesses and proved certain documents.

No doubt it is well entrenched law as has been argued by the two sides that the plaintiffs must stand on its own legs and the onus to prove their case rests upon them. The contention of the counsel for the appellants that the suit has been filed in the capacity of representation by one of the co-owner on behalf of other co-owners and has supported his arguments on the basis of **Ajmer Singh vs. Shamsheer Singh alias Sher Singh, 1983 PLR 786** whereby a Full Bench of our own High Court has clearly held that a suit for possession by one of the co-sharers against trespassers qua unpartitioned property is maintainable without arraying the other co-sharers and which argument could not be controverted on behalf of the respondents. It is the own stand as has been contended of the defendants that they have become owners by way of adverse possession. It is submitted by the appellants' side that where a plea of adverse possession has been raised by a party invariably leads to the inference that they accept the ownership of other side and it has been very well laid down in **Jagat**

Singh vs. Sri Kishan Dass, 2008(2)R.C.R. (Civil) 106 relied upon by the appellants that the question where a plea of adverse possession is raised presupposes title over the suit property of the other side. More so it is not the proven case of any of the defendants as to in whose property they have come to be in alleged occupation by way of adverse possession and to what share has been left in oblivion and thus in the light of Hon'ble Apex Court view relied upon by the appellants in **T.Anjanappa and Ors. vs. Somalingappa and Anr., 2007(1) R.C.R. (Civil) 19**, it cannot be taken to be a case of adverse possession. More-so by now it is well settled position of law, reliance of which can be placed on **Saroop singh vs. Banto and Ors., 2005 AIR (SC) 4407** which enumerates that a person who claims adverse possession needs to show as to when and how he came to be in possession, its nature and the fact that its adverse possession was to the knowledge of the owner and it was long which continued and remained open and hostile to the world at large and on behalf of the respondents their counsel could not point out any such element of evidence proved on the record by the defendants and further more in **Hemaji Waghaji Jat vs. Bhikhabhai Khengarbhai Harijan and Others, 2008(4) R.C.R. (Civil) 401**, the Hon'ble Supreme Court explaining the concept of adverse possession which should be based on certain factors which are essential having regard to the fact that right to possess property is not only a

constitutional right but a human right and thus have denounced the concept of limitation and in this case there is not an iota of evidence as to starting point of limitation as per the plea of the defendant. Further-more similar view was expressed by the Apex Court in **P.T.Munichikkanna Reddy & Ors. vs. Revamma and Ors., 2007(2) R.C.R. (Civil) 847.**

Though much arguments have been sought to be made over the identification of the property and the report of the Local Commissioner by way of Ex. P2 though illustrates that persons numbering 16 named therein are in un-authorized and illegal occupation but having regard to the fact that the two sides clearly accept the fact that in the suit property private houses, public roads, drains have come up during the course of development of the area and thus have ceased to be an agriculture land. Since houses have come up so claimed by the other side and therefore, ambiguous and highly non-described report of the Local Commissioner does not leads the Court to any conclusion where neither it is illustrated which person is in occupation of which portion of the property falling under which khasra number under what status and there is no demarcation of the places and thus makes the task of the Court all the more difficult and seeking support from **Ashok Kumar vs. Ram Asra and others, 1996(3) R.C.R. (Civil) 301** which stresses that there ought to be clear-cut demarcation of property of each of the defendants to enable the Court to identify the same. The facts

and circumstances of the present case besides the fact as has been submitted the demarcation alleged to have been done leading to filing of the report Ex. P2 is contrary to the provisions laid down in Part-M, Chapter-I of High Court Rules and Orders Volume-I as well as guidelines of the Financial Commissioner and therefore, enjoins upon the Court to call for comprehensive report afresh to enable the civil Court to have a judicious comprehensive adjudication of the dispute and the courts below have acted in a casual manner and failed to ensure that dispensation of justice is in the right earnest.

In the totality of these wantings it has become imperative for this Court to remand the case back to the trial court/successor court for fresh trial and to ensure that keeping in view the present circumstances that the property has subsequently become urban, team comprising of Experts in the revenue field in association with the Local Civic Body be appointed as Local Commissioners to demarcate the property qua each of the defendants and as to actual ownership of plaintiffs subject matter of dispute and to report the precise area, identity of the plot where construction has come up, roads, drains or such features thereon etc. with persons in occupation including under which khasra numbers the same falls. The parties are directed to put in appearance before the trial court on 20.4.2015. Having regard to the fact that almost 35 years have elapsed and parties are nowhere

in sight of ultimate justice, trial court to ensure speedy disposal of the matter and having regard to the onerous task of demarcation, it may be ensured that the matter be disposed of expeditiously, preferably within two years from 20.4.2015, the date of appearance of the parties before it.

March 17th, 2015
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(Fateh Deep Singh)
Judge