

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

RSA No.2998 of 1988.

Date of Decision: 18.11.2015.

Bishna and others

....Appellants.

VERSUS

Niranjan Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. P.C. Chaudhary, Advocate for the appellants.

Respondents No.1 to 4 & 7 and 8 died.

Mr. D.S. Adlakha, Advocate for respondents No.5 and 6.

SNEH PRASHAR, J.

1. This was Regular Second Appeal filed by appellants-plaintiffs Bishna and others (hereinafter referred to as the “plaintiffs”) impugning the judgment and decree dated 28.04.1986 passed in Civil Suit No.184 of 20.04.1983 by learned Sub Judge IInd Class, Jagadhri, dismissing the suit for possession filed by them against respondents-defendants Niranjan Singh and others (hereinafter referred to as the “defendants”), which was upheld by the first appellate Court vide judgment and decree dated 01.08.1988.

2. The facts which need elaboration are as under:-

A suit for possession was filed by the plaintiffs claiming to be owners of the house (detailed description of which was given in the head note of the plaint). They submitted that few years back the house was given to defendants No.1 to 3 and Kapoor Singh, father of defendants No.4 to 7 as they were short of accommodation. The said defendants had promised to vacate the house after constructing their own house in a period of one year. However, after expiry of one year instead of handing over possession of the house to the plaintiffs, they transferred possession of the same to Dasondhi (defendant No.8) who started residing in the house illegally. They requested defendants No.1 to 7 to vacate the house but they did not agree and started claiming themselves to be owners and defendant No.8 to be their tenant.

3. The suit was contested by defendants No.1 and 4 to 8. In the joint written statement filed by them, they denied that the house was given by the plaintiffs to defendants No.1 to 3 and father of defendants No.4 to 7. According to them, the plaintiffs took some land from Parsa, father of defendants No.1 to 3 and Kapoor Singh, father of defendants No.4 to 7 and in exchange they gave the land underneath the house to Dasondhi (defendant No.8) in the year 1952-53. While the plaintiffs constructed their house on the land received by them in exchange, Dasondhi also constructed a house at the site in dispute about 30 years back and since then he is residing in the house alongwith his family. They added that the site in dispute was an open *Bara* and Dasondhi purchased the *Bara* from Kapoor Singh for a consideration of Rs.199/- on 20.06.1960. By way of additional

pleas, the defendants claimed that they had become owners of the house by way of adverse possession. They are in continuous, uninterrupted and hostile possession of the same for over 30 years. Preliminary objections with regard to the suit being barred by time and also the suit being not maintainable in the present form were raised.

4. On the rival contentions of the parties, following issues were framed:-

- (1) Whether the plaintiffs are owners of the site in dispute? OPP.
- (2) Whether the defendants have become owners by way of adverse possession? OPD.
- (3) Whether the suit is not maintainable? OPD.
- (4) Whether the suit is barred by limitation? OPD.
- (5) Relief.

5. Both the parties adduced evidence in support of their rival contentions.

6. Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court finding that the possession of defendant No.2 is adverse and hostile to the plaintiffs since long and he has acquired right of ownership by way of adverse possession, dismissed the suit of the appellants.

7. Appellants preferred an appeal against the judgment and decree dated 28.04.1986 passed by learned trial Court which was dismissed by learned Additional District Judge, Ambala vide judgment and decree dated 01.08.1988.

8. Feeling aggrieved, the appellants have filed the instant Regular Second Appeal.

9. The submissions made by Mr. P.C. Chaudhary, learned counsel representing the appellants and Mr. D.S. Adlakha, learned counsel representing respondents No.5 and 6 have been considered and record perused.

10. At the very outset, learned counsel for the appellants submitted that the defence set up by the respondents in their pleadings is completely vague and inconsistent in itself. At the first instance, they alleged that the plaintiffs had exchanged the land beneath the house with some other land owned by Parsa, father of defendants No.1 to 3 and Kapoor Singh, father of defendants No.4 to 7. At the second place, they pleaded that the land beneath the house was an open *Bara* which was purchased by Dasondhi (defendant No.8) from Kapoor Singh for a consideration of Rs.199/- on 20.06.1960. Lastly, they claimed that they had become owners of the house by way of adverse possession as they are in continuous, uninterrupted possession for the last over 30 years. Learned counsel contended that neither the defendants could prove their plea of exchange of the land beneath the house nor they could establish that the *Bara* in existence in 1960 was sold by Kapoor Singh, father of defendants No.4 to 7 to Dasondhi (defendant No.8) for a consideration of Rs.199/-. Both the said pleas raised by the defendants were rejected by learned first appellate Court.

Learned counsel further contended that the third plea of the defendants was that they had become owners of the house by way of

adverse possession for being in continuous and hostile possession of the same for the last more than 12 years. However, no substantive and reliable evidence could be produced by them in that regard. In the Jamabandi for the year 1964-65 to 1978-79 Ex.D5 to Ex.D8 they were recorded to be in possession of the suit property as *Gair Marusi* i.e. tenant. From the said entries, it is established that their possession was permissive possession under the owner which does not remotely come under the spectrum of adverse possession. Learned counsel asserted that a person claiming his possession to be adverse has to prove that his possession is actual, open, notorious, exclusive and continuous for the last more than 12 years. A mere possession or user or permissive possession is completely on a different footing and would not result in acquisition of title by way of adverse possession. To support his argument, learned counsel relied upon *Tribhuvan -shankar vs. Amrutlal, 2014(1) R.C.R. (Civil) 206* and *A. Shanmugam vs. Ariya K.R.K.M.N.P. Sangam Tr. Pres. Etc., 2012(3) R.C.R. (Civil) 1.*

11. Indeed, having failed to establish their claim of ownership qua the house by way of exchange of the land beneath the house by their predecessor in interest with the plaintiffs or by way of sale of the site in dispute by Kapoor Singh to Dasondhi (defendant No.8), the defendants were left only with their plea of having become owners of the house by way of adverse possession. They were not precluded from raising all the defences available to them under the law. If they were unable to prove two of the pleas raised by them, their third defence was not to be rejected on that ground.

According to the plaintiffs, Dasondhi (defendant No.8) was in possession of the house when the present suit was filed. The plaintiffs pleaded that few years back they had given the house for residence to defendants No.1 to 3 and Kapoor Singh, father of defendants No.4 to 7. Neither in the pleadings nor during evidence, the plaintiffs could specifically plead the date, month or year when they had given the house to the defendants. Although they alleged that after expiry of one year the defendants instead of handing over possession of the house to them transferred the possession to Dasondhi (defendant No.8) but they again did not mention the date, month or year when to their knowledge defendants No.1 to 7 handed over possession of the house to Dasondhi. In any case, as per their own pleadings, it was in their knowledge that defendant Dasondhi was in illegal occupation of the house. In the said premises, the fact that primarily requires to be probed is the year when defendant Dasondhi came into possession of the house.

12. The defendants tendered in evidence copies of Jamabandis for the year 1964-65 to 1978-79 Ex.D5 to Ex.D8. In the Jamabandi for the year 1964-65 the site in dispute is recorded as “***Gair Mumkin Bara***” and defendant Dasondhi Ram is recorded to be in possession of the same. The nature of the property is recorded as “***Gair Mumkin Bara***” and the entry in the column of land is “***Zimgi Gair Marusi Shikni Bawajah Khidmat***”. Meaning thereby that no rent was being paid in respect of the site in dispute by defendant Dasondhi. Similar are the entries in the Jamabandi for the year 1968-69 Ex.D6. In the Jamabandi for the year 1973-74 Ex.D7 the suit

property is recorded as ***“Gair Mumkin Makaan”*** i.e. “house”. In the subsequent Jamabandi for the year 1978-79 Ex.D8, defendant Dasondhi is recorded to be in possession of the house without payment of any rent. No evidence could be produced by the plaintiffs to rebut the above entries in the Jamabandis. Needless to say that in absence of rebuttal, presumption of truth is attached to the entries in the Jamabandis. From that, it follows that defendant Dasondhi is in physical possession of the suit property since the year 1964-65. Previously the property was a Bara but as is evident from the Jamabandi Ex.D7 for the year 1973-74 a house was constructed on the land in dispute in between 1968-69 and 1973-74.

13. There are no two thoughts over the law that in order to claim perfect title by adverse possession one has to establish that his possession was actual, open, notorious, exclusive and continuous for the requisite frame of time as provided in law i.e. more than 12 years. In the case in hand, the plaintiffs themselves pleaded that when defendant Dasondhi came into possession of the house and started residing in the same, his possession was illegal. Defendant Dasondhi was proved to be in possession of the house for the last more than 20 years as his possession was being shown in the Jamabandi for the year 1964-65 Ex.D5. Since he is recorded to be in continuous possession in the revenue record needless to say that he constructed the house, the existence of which was shown in the Jamabandi for the year 1973-74 Ex.D7.

Here, it is important to note that the plea of the plaintiffs that they had given the house for residence to defendants No.1 to 3 and Kapoor

Singh, father of defendants No.4 to 7 was wrong as it stands proved that they had not constructed the house. It is also crystal clear that the plaintiffs had knowledge of Dasondhi being in possession of the house since the time he entered in possession i.e. since 1964-65.

14. In addition to the above discussed documentary evidence which proved that the possession of defendant Dasondhi was actual, open, peaceful, continuous and hostile to the knowledge of the plaintiffs, the said fact was also proved by DW1 Devi Dayal, Retd. Patwari, who deposed that in 1962-63 he was the Area Patwari and he had found defendant Dasondhi to be in possession of the house and had shown his possession as adverse while demarcating the same. The construction of the house beyond 12 years from the date of filing of the suit may not have been established but it is crystal clear from the ocular as well as documentary evidence that defendant Dasondhi had been in exclusive possession of the suit property much prior to 1964-65 and that is sufficient to hold the ouster of the true owner. Accordingly, it is held that learned trial Court as well as learned first appellate Court rightly held that defendant Dasondhi had become owner of the suit property/house by adverse possession. When the plaintiffs intentionally presented wrong facts, their claim deserved outright dismissal.

Thus, finding no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

18.11.2015
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