In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 735 of 1988

Date of Decision: 24.7.2015

Bhagirath

... Appellant(s)

Versus

Sultan and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice G.S.Sandhawalia.

Present: Mr. Alok Jain, Advocate
for the appellant(s).

Mr. M.S.Sindhu, Advocate
for respondent No.1.

G.S.Sandhawalia, J. (Oral)

1. The present appeal is directed against the concurrent findings of facts whereby the suit of the plaintiff/appellant for declaration that he along with his brother, defendant No.3, is owner in possession, was dismissed.

2. The suit was based on the ground that the land described as per heading of the suit and as per the site plan attached and the decision of the Gram Panchayat, Niamatpur dated 12.1.1980 had been given in equal shares to the plaintiff and his brother. The defendants No.1 & 2 had executed sale deed in connection with the "Guwada" was not binding upon him since the vendor Shri Ram, defendant No.2 was not owner in possession thereof and he had no right to alienate the same. The plaintiff was in possession of the northern side of the said "Guwada" since the time of his forefathers and therefore, he was entitled for the disputed land shown towards the southern side on the dotted line as per the site plan. The plea of adverse possession was also taken to claim the ownership.

3. The defendant No.3 filed a written statement admitting the

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claim of the plaintiff/appellant whereas the contest was by defendant No.1-Sultan, who specifically pleaded that the plaintiff and defendant No.3 were owner in possession of "Guwada" falling in khasra No. 215 only and they have no concern with the "Guwada" falling on the southern side thereof. The boundaries had not been explained and have not been mentioned in the plaint where the property was situated and the plaint was vague and indefinite. The said defendant set up the sale deed bearing No. 1967 dated 15.1.1980 and took the plea that he was in possession of that "Guwada" and the site plan given by the plaintiff was wrong. The right of the Gram Panchayat in adjudicating upon the dispute regarding the title was not binding upon the said defendant. It was pleaded that defendant No.1 had contested the elections against the present Sarpanch, who had a grudge against him and false order had been got passed by the plaintiff in his favour in collusion with the said Sarpanch. The allegations of adverse possession were denied.

4. The trial Court, on the basis of above said pleadings, framed the following issues:

> *"1. Whether the plaintiff and proforma defendant are the owners in possession of the Gaits in dispute. If not, if effect? OPP*
>
> *2. Whether the suit is not maintainable? OPD*
>
> *3. Whether the suit is improperly valued for the purpose of court fee and jurisdiction? OPD*
>
> *4. Whether the site plan produced by the plaintiff is incorrect, if so, its effect? OPD*

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5. Relief."

5. On issues No.1 & 4, it was noticed that as per the claim, partition had been effected between the father and their brothers and the decision of Panchayat dated 12.1.1980. The said document had never been referred to in the list of reliance and the same did not have the specimen signatures of his father and the uncles. The same was not registered and therefore, no title could be passed on the basis of the said document, which is Mark “A”. Similarly, regarding the claim of passage Mark “B”, neither the scribe nor the persons concerned were produced in the Court to support the case of the plaintiff. PW.2, the alleged Sarpanch, had not supported the document Ex.P3, order of the Gram Panchayat, on the basis of which the plaintiff was basing his claim. It was also noticed that the said order was only tendered into evidence when the affirmative evidence was concluded by the counsel for the plaintiff. The factum of inability of the Panchayat to decide the question of title and giving the right of immovable property to someone, was also taken into consideration.

6. Accordingly, it was held that the plaintiff had failed to prove his possession as well as ownership especially in view of the fact that the site plan was contradictory. As per the *Aks Shijra*, more area had been shown in Ex.P2. In contradiction thereof, it was noticed that the defendant had produced the copy of sale deed Ex.D1 dated 15.1.1980 along with the site plan, which was similar to the area of the “Guwada” in dispute. It was noticed that DW.5 Bholla Ram, Scribe and the witnesses, namely Bhagwana and Onkar, DW.3 & DW.4, had been produced and

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merely because they were related, their evidence could not be discarded and the defendant having a sale deed duly registered had proof of title and ownership. Accordingly, the suit was dismissed.

7. The plaintiff took the matter in appeal before the lower Appellate Court, which found that in the absence of documentary evidence or circumstantial evidence, it was not clear that under what circumstances the documents Ex.P3 & P4 have been brought into existence. There was no dispute prior to that between the brothers which could have been adjudicated upon and no Panchayat official had been examined to vouchsafe the authenticity of that record. Accordingly, the said documents were rejected on account of the lack of evidentiary value that they could have bestowed any right or title over the site of "Guwada".

8. It was also noticed that the application for demarcation of the property in question had never been pressed at an appropriate time and only when the case was fixed for rebuttal evidence, the same was pressed. The exact measurements of the boundaries of the site in dispute had not been given and therefore, the plaintiff was held disentitled for the grant of discretionary relief of injunction also.

9. Learned counsel for the appellant has submitted that the defendants had failed to produce the vendor of the sale deed Ex.D1 on the basis of which the contesting defendant/respondent was pressing his claim and therefore, contended that the said registered sale deed had been wrongly read against the plaintiff. He further submitted that there was misreading of the evidence and both the Courts below had erred in

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dismissing the suit.

10. Learned counsel for respondent No.1, on the other hand, has submitted that in view of the concurrent finding recorded, they were not liable to be interfered in the absence of substantial questions of law arising.

11. The facts have been noticed in detail. Apparently, the suit, was filed on 19.3.1980, once the sale deed dated 15.1.1980 had been executed in favour of the defendant No.1. It is on that basis, the plaintiff started agitating regarding the area which was a subject matter of the sale deed Ex.D1. The said sale deed has been amply proved by the defendant examining not only the Scribe but also the two witnesses and the contents of the same also referred to the site plan Ex.D2. It was, thus, for the plaintiff to stand on his own legs once he was raising the issue of title of the said portion of the land and it cannot be submitted that the case of the defendants had not been proved by submitting that the vendor had not been produced. It was for him to prove that on what basis he was getting title to the suit land and merely by tendering into evidence the documents when the affirmative evidence was closed, he could not have raised a valid claim regarding the immovable property measuring 1167 square yards which has been validly rejected by the Courts below. It is also to be noticed that there are no specific boundaries, which have been mentioned in the plaint, which is one of the reasons given by the lower Courts also to disentitle the plaintiff. In the absence of any specific boundaries, the claim of title in the suit land or injunction was, thus, rightly declined.

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12. Another important aspect to be taken into consideration is that the suit itself was on alternative basis whereby adverse possession was set up. It is settled principle that adverse possession can only be claimed against the original owner. By virtue of this pleading, the plaintiff himself admitted that the title of the property in dispute is none else but of the defendant No.1.

13. The principle of adverse possession is primarily based upon the hostility to the real owner and the denial of title and against the right of the original owner who has been denied the right of enjoyment of the property. The plaintiff, once alleging adverse possession, could not then hold out that the defendant No.1 had no right or title to their property. The principles regarding adverse possession were noticed by the Hon'ble Apex Court in ***T. Anjanappa and Others v. Somalingappa and Another 2006(7) Supreme Court Cases 570***, wherein it was observed as under:-

> *"18. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of any person to whom the land rightfully belongs and tends to extinguish that person's title, which provides that no person shall make an entry or distress, or bring an action to recover any land or rent, but within twelve years next after the time when the right first accrued, and does away with the doctrine of adverse possession, except in the cases provided for by Section 15. Possession is not held to be adverse if it can be referred to a lawful title.*

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19. According to Pollock, "In common speech a man is said to be in possession of anything of which he has the apparent control or from the use of which he has the apparent powers of excluding others".

20. It is the basic principle of law of adverse possession that (a) it is the temporary and abnormal separation of the property from the title of it when a man holds property innocently against all the world but wrongfully against the true owner; (b) it is possession inconsistent with the title of the true owner.

21. In Halsbury's 1953 Edition, Volume-I it has been stated as follows:

> *"At the determination of the statutory period limited to any person for making an entry or bringing an action, the right or title of such person to the land, rent or advowson, for the recovery of which such entry or action might have been made or brought within such period is extinguished and such title cannot afterwards be reviewed either by re-entry or by subsequent acknowledgement. The operation of the statute is merely negative, it extinguished the right and title of the dispossessed owner and leaves the occupant with a title gained by the fact of possession and resting on the infirmity of the right of the others to eject him".*

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22. It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."

14. This Court in ***Jagat Singh v. Sri Kishan Dass 2008(2) R.C.R. (Civil) 106*** held that once the plea of adverse possession has been taken, then the title of the opposite side has been admitted and neither law nor equity warrants any indulgence to any such person. The relevant observations read as under:-

"5. The question that the plaintiff has not established the identity of the suit land or the property cannot be identified, is not borne out from the record. The defendant-appellants have raised a plea of adverse possession. Once a plea of adverse possession is raised, it pre-supposes the title over the

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suit land of the plaintiff. The title of the plaintiff is deemed to be admitted, the argument that the property is not identifiable falls to be ground. Therefore, the argument raised by learned Counsel for the appellants that infructuous decree could not be passed, is not made in view of the plea of adverse possession over the suit land raised by the appellants.

6. The argument that the plaintiff has seen the defendants raising construction and thus estopped to claim possession, is not tenable. The appellants have asserted title on the basis of purchase. However, neither the alleged vendor nor their title nor any document of title has been produced. In the absence of any document of title in their favour, the argument that the defendants are in possession of the suit land as owners and that they have a legal right to retain it, is not made out. Once the defendants have raised a plea of adverse possession, the plaintiff is presumed to be owner of the suit land. Under Article 65 of the Limitation Act, 1963, the defendants have to allege and prove that their possession over the suit land is hostile to the knowledge of the true owners for a continuous period of 12 years. In fact, there is no plea or evidence that the defendants entered into possession of the suit land to the knowledge of the plaintiff. The possession was not hostile at the time of inception. The possession, how so ever long, does not confer any right or title in favour of the defendants. Therefore, the plea of estoppel

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cannot be raised as the defendants could defeat the claim of the plaintiff only on proof of adverse possession.

7. The judgment referred to by learned Counsel for the appellants is of no help to the appellants as it was found that a Government undertaking should not have raised plea of adverse possession and in fact, the learned First Appellate Court has granted decree for payment of compensation of the constructions raised. In the present case, no such plea is available. The appellants have failed to prove their title and have raised unsuccessful plea of adverse possession. Neither law or equity warrants any indulgence to such person."

15. Admission is the best evidence which has to be successfully explained or withdrawn and once the plea of adverse possession had also been taken, the argument that the defendant No.2 had failed to prove his right, is without any basis. It is apparent that the plaintiffs could not then hold out that the registered sale deed in favour of defendant No.1 was wrongly taken into consideration. Rather on the pleadings of the parties, it is clear that the suit as noticed earlier was filed only on the basis of the sale deed which had been executed by alleging that the same was not binding upon the plaintiff. The suit, thus, apparently was collusive between the brothers and was filed only on the strength of the order of the Panchayat, which has rightly held not to be proved by the Courts below.

16. In view of the factual findings of facts, no substantial questions of law arise for consideration before this Court. The Hon'ble Apex Court

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in ***Veerayee Ammal v. Seeni Ammal (2002)1 Supreme Court Cases 134*** has held that it would not be appropriate for the High Court to disturb the finding by substituting its own finding for the findings of the Courts below. The relevant portion of the said judgment reads as follows:-

> *"10. The question of law formulated as substantial question of law in the instant case cannot, in any way, be termed to be a question of law much less as substantial question of law. The question formulated in fact is a question of fact. Merely because of appreciation of evidence another view is also possible would not clothe the High Court to assume the jurisdiction by terming the question as substantial question of law. In this case Issue NO.1, as framed by the Trial Court, was, admittedly, an issue of fact which was concurrently held in favour of the appellant-plaintiff and did not justify the High Court to disturb the same by substituting its own finding for the findings of the courts below, arrived at on appreciation of evidence."*

17. Keeping in view the above said principle, this Court is of the opinion that there is no scope for interference in the present appeal in the absence of substantial question of law. Accordingly, the present appeal is dismissed.

(G.S.Sandhawalia)
Judge

July 24, 2015
"DK"

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