

327

IN THE HIGH Court OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2049 of 1989 (O&M)
Date of Decision: 11.02.2015

Rupinder Singh and anotherAppellants

Vs

Naranjan SinghRespondent

CORAM:HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sudhir Mittal, Advocate
for the appellants.

None for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Instant Regular Second Appeal was filed under Section 41 of the Punjab Courts Act. In view of Full Bench judgment of this Court in **Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I** framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clause (a) to (c) of Section 100(i) CPC. Now second appeal requires substantial question of law to be framed and thereafter inference can be made, because inference cannot be made only because the order is

contrary to law, but when the disputed issues raise a substantial question of law limiting such a power in the Appellate Authority based on public policy having roots in the maxim of "*interest reipublicae ut sit finis litium*".

[2]. Adhering to the aforesaid requirement, this Court considers that following substantial questions of law can be formulated in this regular second appeal for consideration:-

1. Whether denial of title of the plaintiff by the defendant amounts to repudiating the relationship of landlord and tenant, giving rise to forfeiture of lease?

2. Whether denial of relationship of the landlord and tenant by the defendant gives rise to determination of tenancy and gives right of possession of the property in favour of the plaintiffs by way of a civil suit?

[3]. Before advertng to the facts of the present appeal, it is necessary to peruse the status of other connected appeals. In the present appeal, pleadings of the parties are complete. However, in other connected appeals pleadings are not complete.

[4]. On 11.11.2011 this Court observed that there is nobody to represent the respondent(s) in other three remaining appeals i.e. RSA Nos.2050, 2051 of 1989 and 772 of 1991. The Court directed the office to inform the learned counsel representing the respondent(s) in those remaining three appeals. It was made clear

that no further adjournment shall be granted. On the adjourned date, learned counsel for the appellants sought time to implead the legal representatives of respondent(s) in RSA Nos.2050 of 1989 and 772 of 1991 and notice issued to respondent in RSA No.2051 of 1989 was not received back served or otherwise.

[5]. The non-service of respondent(s) in connected appeals will not prevent this Court to decide the present appeal in which pleadings are complete. The fault attributed to the appellants or LR's of respondent(s) themselves in not pursuing the litigation would be seen in those appeals when these appeals will be taken up. Therefore, the present appeal RSA No.2049 of 1989 is segregated from the lot and is being taken up for disposal.

[6]. Plaintiffs are in appeal in a suit for possession in respect of land measuring 16 Kanal 16 Marla claiming ownership and alleged that the defendant is in wrongful possession of the land without any right, title or interest therein. Being owner of the property, plaintiffs alleged that they are entitled to seek possession thereof as the defendant has refused to deliver the same. The suit was resisted by the defendant on the ground of maintainability, limitation and the defendant claimed the property in his own rights of adverse possession being in possession of the same for the last 25 years. The suit was contested on other customary grounds also.

[7]. On filing of the replication, trial Court framed the following issues:-

- “1. *Whether the plaintiffs are owners of the land in dispute? OPP.*
2. *Whether the plaintiffs are entitled for the possession of the land in dispute?*
3. *Whether the suit is not maintainable? OPD.*
4. *Whether the plaintiffs have no locus standi to file the present suit? OPD.*
5. *Whether the suit is time barred? OPD.*
6. *Whether the defendants have become the owner of the suit land by way of adverse possession? OPD.*
7. *Whether the plaintiffs are estopped by their own act and conduct? OPD.*
8. *Whether the civil Court has got no jurisdiction? OPD.*
9. *Whether the defendant reclaimed the suit land, if so to what effect? OPD.*
10. *Relief.”*

[8]. Trial Court dismissed the suit vide judgment and decree 31.10.1987 by clubbing issues No.1 and 6 and decided the same against the plaintiffs by holding that the defendant has become owner of the property by way of adverse possession and, therefore, the plaintiffs were not left with any title in the suit property. Issue No.2 was also decided against the plaintiffs on the basis of findings recorded under issues No.1 and 6. Since the plaintiffs were held not entitled to any title and defendant became owner by virtue of adverse possession, therefore, issue No.3 was also decided in favour of the defendant and against the plaintiff by holding that suit was not

maintainable. Issue No.4 was also decided in favour of the defendant and the suit of the plaintiffs was held time barred under issue No.5 as the defendant was found to be in possession since 1969. Decision of issue No.7 went against the defendant and trial Court held that jurisdiction of civil Court was not barred under issue No.8. In view of finding recorded under issue No.6, issue No.9 was held redundant resultantly the suit was dismissed by the trial Court.

[9]. In appeal, Lower Appellate Court reversed the finding under issues No.1 and 6 and with this reversal, issues No.2, 3, 4 and 8 were decided. With the rejection of plea of adverse possession, it was held that earlier entries in the revenue record would prevail thereby acknowledging the status of the defendant as lessee over the suit land on payment of *lagaan* at the rate of 6 per acre per annum. In this way defendant was held to be tenant as defined under Section 2(6) of Punjab Security of Land Tenures Act and under Section 4(5) of the Punjab Tenancy Act.

[10]. Lower Appellate Court further held that the owner cannot seek possession of the land by way of resorting to civil suit as for the said purpose, the landlord should have availed the remedy of revenue Court for appropriate relief under the provisions of Punjab Security of Land Tenures Act. The decision of the trial Court under issues No.2, 3 and 4 was upheld and it was held that civil Court has got no jurisdiction under issue No.8. In view of reversal of finding under issue No.6, the findings recorded under issue No.5 were

reversed. Fate of the case remained the same before the Lower Appellate Court despite reversing findings under issues No.1, 5, 6 and 8. Reversal of finding under issue No.8 was taken to be a ground for dismissal of the appeal as civil Court was held to be not having any jurisdiction to grant decree of possession.

[11]. This Court has considered the material on record with the able assistance of learned counsel for the appellants/plaintiffs. The written statement filed by the defendant/respondent gave the following recital in the preliminary objections:-

- “1. That the plaintiff has no *lucus standi* to file the present suit.
2. That the suit of the plaintiff is not maintainable.
3. That the suit of the plaintiff is not within time.
4. That the deft. is in possession of the suit land in assertion of his right of ownership and has spent more 20,000/- upon its reclamation. The deft. has been cultivating the suit land for the last more than 25 years as owner and never paid anything to anybody on account of any *batai* or *lagaan* or any lease money, except the land tax. The deft. has thus become the owner of the suit land by adverse possession. The entries in the revenue record regarding lease money are totally false and wrong and against facts.
5. That the value of the suit for purposes of court fee and jurisdiction is totally incorrect and wrong.
6. The plaintiff has been seeing the defts. cultivating the suit land for the last more than 25 years and never objected. The plffs. are therefore estopped from the filing of the present suit by his own act and conduct.

7. *That this Court has no jurisdiction to entertain and try the present suit. The plff. has already filed partition proceedings of the suit property regarding the above said land, so it is the duty of the revenue officer to deliver the possession of the suit land to the plff.”*

[12]. In para No.3 of the written statement on merits, the defendant incorporated the following stand:-

“3. That para No.3 of the plaintiff is wrong and denied. Rather the defendant has become the owner of the suit land by adverse possession, as detailed in pre-objection of the written statement above.”

[13]. Apparently the defendant denied the title of the plaintiffs and asserted his right of ownership on the basis of adverse possession.

[14]. The question arises for kind consideration before this Court is pure question of law and is dependent upon interpretation of Section 111 of the Transfer of Property Act, 1882. For ready reference Section 111 of the Act is reproduced hereunder:-

“111. Determination of lease.—A lease of immoveable property determines—

(a) by efflux of the time limited thereby;

(b) where such time is limited conditionally on the happening of some event—by the happening of such event;

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event;

(d) *in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;*

(e) *by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;*

(f) *by implied surrender;*

(g) *by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter 1[* * *]; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; 2[or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event]; and in 3 [any of these cases] the lessor or his transferee 4[gives notice in writing to the lessee of] his intention to determine the lease;*

(h) *on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other. Illustration to clause (f) A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon. COMMENTS Doctrine of merger The doctrine of merger is attracted when a leasehold and reversion coincide. If the lessee purchases the lessor's interest, the lease is relinquished as the same person cannot at the same time be both landlord and tenant. The doctrine of merger is based on the principle of union of two conflicting interests which cannot be held by one person at the same time. Therefore, the leasehold rights in favour of the appellants stand extinguished; Ramesh Kumar Jhambh v. Official Assignee, High Court Bombay, AIR 1993 Bom 374. Implied surrender There can be implied surrender, if the lessor grants a new lease to a third person with the assent of the lessee under the existing lease who delivers the possession to such person or where the lessee directs his sub-tenant to pay the rent directly to the lessor. Since the respondents had by executing the agreement impliedly surrendered their leasehold rights, they were no longer lessees; P.M.C. Kunhiraman Nair v. C.R. Nagaratha Iyer, AIR 1993 SC 307. Clause (1) of section 111(g) has no application as there was no covenant*

prohibiting sale or on its breach, of the right of re-entry. Clause (2) of section 111(g) is also of no avail to the landlord for forfeiture because there is no unequivocal and clear disclaimer of title of the landlord. Therefore neither clause (1) nor (2) of section 111(g) are of any avail for forfeiture; Guru Amarjit Singh v. Rattan Chand, AIR 1994 SC 227. The statement by the tenant that he was not aware of as to who was his landlord cannot be held to be denial of title of landlord and no eviction decree by forfeiture was granted; Munisami Naidu v. C. Ranganathan, AIR 1991 SC 492. It has been held that the Board was entitled to institute proceedings against the tenant as the notice period had expired; Vasant Kumar Radhakishan Vora v. The Board of Trustees of the Port of Bombay, AIR 1991 SC 14.”

[15]. The point for consideration is whether by denouncing the title of the plaintiffs and by claiming ownership by way of adverse possession by the defendant, he had forfeited his rights of tenancy?

Whether the plaintiffs would be entitled to invoke jurisdiction of civil Court by resorting to suit for possession?

And whether the revenue Court under the Punjab Tenancy Act, 1887 has no jurisdiction to entertain prayer for ejectment of the defendant?

[16]. The aforesaid proposition of law had its interpretation in numerous precedents before re-organisation of States of Punjab and Haryana. In **Sada Ram and others v. Gajjan, 1970 P.L.R. 223** a Division Bench of this Court held:-

“.....that the denial of the relationship of landlord and tenant by the tenant in his written statement to a suit for ejectment determines a tenancy forthwith, thus giving the right to the landlord to the possession of the

leased property, when the lease is not for a fixed period but from year to year or at will as in the present case. A year to year tenancy or a tenancy at will get determined by such a denial or renunciation of title.”

[17]. The aforesaid dictum laid down by the Division Bench of this Court was subsequently followed in **Ujagar Singh and othes v. Kidar Nath and others, 1981 P.L.J. 396** and it was held that if a tenant denies the relationship of land and tenant between the parties in his written statement, his tenancy is determined and the landlord gets a right to the possession of the property.

[18]. The sole point which arose for consideration was whether on denouncing the title of the landlord and getting the rights of tenancy forfeited, the civil Court had jurisdiction to pass decree for possession or the plaintiffs be driven to revenue Court for seeking ejectment under Punjab Tenancy Act, 1887.

[19]. In **Smt. Bharto and others vs. Nathu, 1986 R.R.R. 201** wherein this Court held:-

“Mst Chalti sought remedy for ejectment of the respondent before the revenue Courts and exhausted the same up to the stage of appeal before the Commissioner. She, however, could not succeed as the respondent denied her title as also relationship of landlord and tenant. She was, therefore, forced to seek remedy for declaration of her title and possession in the civil Court. Neither in the previous suit filed by her nor in the instant suit the respondent ever accepted his character as tenant under

*her. He instead denied the fact that Mst. Chalti was the daughter of Lehri deceased and in fact pleaded ownership of the suit land by way of adverse possession as also in his capacity as a collateral and sole heir of Lehri. In this situation, it was not at all just and proper to relegate the plaintiffs once again to seek remedy for ejectment of the respondent, in his character as tenant, before the revenue authorities. I am fortified in this view by a Division Bench judgment of this Court in **Sada Ram and others v. Gajjan, 1970 P.L.R. 223.***

[20]. In **Ganesh Dutt and others v. Molu Ram and others 1987 P.L.J. 435** this Court meticulously considered all the precedents for and against on the subject matter and ultimately held that forfeiture of right of tenancy, civil Court has jurisdiction to pass decree for possession:-

“17. In view of the above discussion, I accept this appeal and set aside the judgment and decree of the first Appellate Court, restore the judgment and decree of the trial Court and pass decree for possession of the suit land in favour of the plaintiff-appellants. The order of amendment allowed by the first Appellate Court on application filed by respondent Nos.1 to 5 for amending their written statement under Order 6 Rule 17, Civil Procedure Code, 1908 was wrongly passed and is hereby set aside and, therefore, the question of framing of additional issue No.6-A does not arise. Even otherwise the finding on issue No.6-A is set aside and respondent Nos.1 to 5 cannot take any advantage of Molu Ram defendant No.1's original status as tenant under Kali Dutt and he had not only forfeited his right before the filing of this suit but

also forfeited his right by specific and clear denial in the written statement filed in this suit. Respondent Nos.1 to 5 are to bear and costs of all the Courts.”

[21]. Since the Lower Appellate Court reversed the finding under issues No.1 and 6 and also held that suit is within limitation, therefore, only finding recorded was suffice to dismiss the suit by the Lower Appellate Court.

[22]. The finding of reversal recorded under issue No.6 by the Lower Appellate Court was lawful and had its root in basic interpretation of maxim '*nec vi, nec clam, nec precario*'. The mere possession or permissive possession does not demonstrate spectrum of adverse possession. For claiming adverse possession defendant must prove his possession to be peaceful, open and continuous. Such possession should be actual, open, notorious, exclusive and continuous for required time. The possession should be adequate in continuity, in publicity and in extent to show that his possession is adverse to the very knowledge of the true owner. The possession must start with a wrongful dispossession of the rightful owner and should be actual, visible, exclusive, hostile and continued for a statutory period. The plea of adverse possession is not a pure question of law, it is the interpretation based on the following text mechanism:-

- (a) On what date defendant came into possession?
- (b) What was the nature of his possession?
- (c) Whether the factum of possession was known to

- the plaintiffs?
- (d) How long his possession had continued?
- (e) Is possession was open and undisputed?

[23]. Plea of adverse possession has no equities, this has same instinct of piratical rights. Necessary ingredients on the subject issue can be viewed from the authoritative judgment of the Hon'ble Supreme Court in **Karnataka Wakf Board vs. Government of India (2004) Volume 2 RCA Civil 702.**

[23]. Lower Appellate Court though did not advert to the aforesaid details, but rightly observed under issue No.6 that defendant has failed to prove his title on the basis of adverse possession.

[24]. Even despite reversal of findings under issues No.1, 5, 6 and 8, the fate of the suit remained the same before the Lower Appellate Court as the Court held under issue No.8 that civil Court had got no jurisdiction to entertain the suit.

[25]. Having deliberated the issue in detail, this Court has come to the conclusion that on denouncing the title of the landlord, the tenant had forfeited his right of tenancy and in such event civil Court has got jurisdiction to grant decree for possession against the defendant. In this way substantial questions of law No.1 and 2 both are answered in favour of the plaintiffs by holding that the defendant on repudiation of title of the lessor had forfeited his right of tenancy and, therefore, suit for possession was maintainable before the civil

Court as the cause of the action was within limitation.

[26]. Having reversed the findings under issue No.8, this Court is of the view that suit of the plaintiffs is legally required to be decreed thereby setting aside the judgments and decrees passed by the Courts below.

[27]. Resultantly, this appeal is allowed, impugned judgment and decree dated 20.03.1989 and 31.10.1987 passed by Lower Appellate Court and Trial Court respectively, are set aside. Suit of the plaintiffs is decreed with costs throughout. Decree sheet be drawn.

February 11, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE