

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

**RSA No. 314 of 1991
Date of decision : 5.12.2015**

Bhupinder Singh

.....Appellant

v.

Chattar Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters? Yes
3. Whether the judgment should be reported in the Digest?

Present : Mr. Raj Kumar Gupta, Advocate, for the appellant

Mr. Vinod S. Bhardwaj, Advocate, for the respondent

Ramendra Jain, J.

1. Unsuccessful plaintiff has preferred this appeal against the judgment and decree dated 14.11.1990 passed by the learned District Judge, Jind, dismissing his appeal.

2. Brief facts of the case are that the appellant-plaintiff claiming himself to be owner of land comprising Khewat No. 325 Khata No. 407 min., Rec. No.111, Killa No. 11, measuring 2 kanals 4 marlas, situated in Village Julana, Tehsil and District Jind as per jamabandi for the year 1983-84, filed a suit for possession of 10 marlas land out of the aforesaid land (in short “suit property”) encroached upon by the respondent-defendant by raising construction thereupon, on the basis of demarcation report dated 19.12.1986.

3. Upon notice, the respondent contested the suit. In his written statement, he took preliminary objection that the appellant-plaintiff was not the son of Hira Singh. On merit, denying the ownership of the appellant-plaintiff over the suit property, it was pleaded that his forefathers had raised construction of a house in it, around 50 years back. Since then, he or his predecessors were in possession of the same. Their possession since then was open and hostile to all and sundry. Initially, it was a kacha house. However, around 25 years back some portion of the same was converted in pucca one. He had become owner of the suit property by way of adverse possession.

4. Replication was filed, denying the averments of the written statement and reiterating that of the plaint. From the pleadings of the parties, learned trial Court framed the following issues to decide the case :-

1. Whether the plaintiff is entitled for possession of 10 marlas of land situated in the area of Village Julana, the details of which have been given in the headnote of the plaint? OPP
2. Whether the plaintiff is not son of Hira Singh son of Giani and therefore, he has got no cause of action? OPD
3. Whether the defendant is entitled for special costs? OPD
4. Relief.”

5. The appellant-plaintiff in support of his case appeared as PW-1, followed by Rajinder Singh PW-2, Phul Singh, Patwari PW-3, who proved demarcation report Ex.P-1 and measurement report Ex.P-2 and Dalbir Singh, Draftsman PW-4, who proved site plan Ex.P-3. He also relied upon Jamabandi for the year 1983-84 Ex.P-4.

6. On the other hand, the respondent-defendant appeared as DW-1, followed by Dharam Pal DW-2, Hari Ram DW-3 and Rattan Singh DW-4. He relied upon mutations Ex.D-1 to D-4.

7. After hearing learned counsel for the parties, the learned trial Court while deciding Issue No.1 against the appellant-plaintiff and Issues No.2 & 3 against the defendant, dismissed the suit vide judgment and decree dated 2.4.1990, holding that the plaintiff was not entitled to possession of the suit property as the respondent-defendant had become owner of the same by way of adverse possession.

8. The appeal filed by the appellant-plaintiff before the learned District Judge, Jind, resulted in dismissal vide judgment and decree dated 14.11.1990. Still not satisfied, the appellant-plaintiff has preferred the present appeal.

9. Learned counsel for the appellant-plaintiff has contended that the impugned judgments of both the learned Courts below are based on surmises and conjectures. Both the Courts below have non-suited the appellant-plaintiff on the sole base that the demarcation report Ex.P-1 was not legally proved by examining its author i.e. the Field Kanungo. The learned Appellate Court has wrongly dismissed his application for additional evidence to prove demarcation report by examining its author. He further contended that both the learned Courts below held the appellant-plaintiff owner of the suit property on the basis of revenue entries in jamabandi Ex.P-4, but rejected his claim by wrongly declaring the respondent-defendant owner in possession of the same by way of adverse possession. Both the learned Courts below have failed to appreciate that the respondent-defendant had not led any specific evidence as to on which date, he came in possession of the suit property or that his alleged possession was within the knowledge of the appellant-plaintiff or his forefathers, which were the necessary ingredients to claim adverse possession. There was no

necessity to examine Field Kanungo to prove demarcation report Ex.P-1, because Phul Singh, Patwari, PW-3 has categorically stated that suit property was demarcated in his presence. Demarcation report Ex.P-1 was issued by him, which was correct as per original record. Both the learned Courts below failed to appreciate that the demarcation report Ex.P-1 and site plan Ex.P-2 were prepared from the copies of the original official record maintained by the public servants in discharge of their official duties and thus, were per se admissible. The appellant-plaintiff had nowhere admitted as PW-1 that the respondent-defendant had constructed his house 40 years back over the suit property in his presence without any objection. In fact, he had deposed about the aforesaid construction raised by the respondent-defendant on his own property. The suit property was encroached upon by the respondent-defendant about two years back from the filing of the suit.

10. On the other hand, learned counsel for the defendant-respondent pleaded the legality and validity of the impugned judgments and decrees by urging that the respondent as DW-1 has categorically deposed that the construction over the suit property was raised around 50 years back. Initially, it was a kutchha house and about 25 years back some portion of it was turned into pucca construction. The findings of both the learned Courts below are based on factual matrix and thus, requires no interference.

11. I have given my thoughtful consideration to the submissions made by both the sides.

12. Undisputedly, the appellant-plaintiff has claimed his ownership over the suit property on the basis of jamabandi Ex.P-4. Both the learned Courts below have held his title on that basis. The stand of the appellant-plaintiff is

that the respondent-defendant, out of the total measuring 2 kanals 4 marlas, illegally encroached upon 10 marlas of land around two years back. Contrary to it, the respondent-defendant has claimed his ownership over the same by way of adverse possession.

13. A party claiming adverse possession must prove that his possession is “nec vi, nec clam, nec precario”, that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that the same is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

14. In other words, there must be some evidence, when the possession became adverse, so that the starting point of limitation against the party affected can be found. Plea of adverse possession is not a pure question of law, but a blended one of fact and law. Therefore, to claim adverse possession one has to show “on what date he came in possession; what was the nature of his possession; whether the factum of possession was in the knowledge of other party; how long his possession is continued and whether his possession is undisturbed. Reference can be had to **Ganda Singh and others v. Ram Narain Singh**, AIR 1959 (Punjab) 147, (FB) wherein it has been held that in order to succeed on the plea of adverse possession, several facts have to be stated and substantiated by the party basing his title on this plea. Burden of proof of adverse possession is on the party setting up such a title. The person claiming adverse possession has to allege and establish that his possession was actual, adverse, exclusive, peaceful, continuous, unbroken, open, notorious, visible, distinct and unequivocal and hostile under a colour of title or claim of

right. He must further prove the date of commencement, the territorial extent and the length of his adverse possession.

15. In the instant case, both the learned Courts below despite accepting the title of the appellant-plaintiff over the suit property dismissed his suit by accepting the plea of the respondent-defendant of ownership by way of adverse possession, though he did not ever disclose or plead - (i) the particular date of his entering into the un-authorised possession over suit property; (ii) whether his adverse occupation from that particular date was continuously within the knowledge of the appellant-plaintiff.

16. Even the defendant-respondent did not produce any electricity bill, chulha tax receipt, voters list or voter identity card, ration card etc., in support of his above contention. Both the learned Courts below accepted his claim simply on the basis of his bald statement without any corroborating or supporting document. It is worthwhile to mention here that the appellant-plaintiff had moved an application for additional evidence before the learned Appellate Court to prove demarcation report Ex.P-1 by examining its author, but, it was rejected on flimsy ground that no attempt was made by him to this effect before the learned trial Court. At the appellate stage, such a request cannot be permitted, which is an attempt on the part of the appellant to fill in lacuna.

17. The above finding of the learned Appellate Court is factually incorrect, because perusal of the trial Court record shows that the appellant-plaintiff on 2.3.1989, through his counsel had brought into the notice of the Court that he wants to examine Field Kanungo. However, his counsel later on did not examine the said Kanungo for the reasons best known to him. Hence, for his this lapse, the appellant-plaintiff could not have been non suited by the

learned Courts below. Even otherwise, Patwari Phul Singh, PW-3, has categorically deposed that the demarcation was done in his presence. More so, demarcation report Ex.P-1 and site plan Ex.P-2 were public documents prepared by the Government officials in discharge of their official duties. Thus, in the considered opinion of this Court, both the learned Courts below should have taken the same into account being exhibited documents to do substantial justice. More so, it is well settled that a party should not be non-suited merely on technical ground.

18. Undisputedly, both the learned Courts below have held the title of the appellant-plaintiff over the suit land. The defendant-respondent in his written statement, in reply to para No.1 of the plaint, specifically denied the ownership of the appellant-plaintiff over the suit property or any portion thereof. Thus, by any stretch of imagination, he was not entitled to claim adverse possession over the suit property against the appellant-plaintiff by denying his title, because adverse possession can only be claimed against a true owner. The learned trial Court instead of dismissing the suit, should have got demarcated the suit property afresh by appointing a local commissioner to resolve the controversy in dispute in between the parties for all times to come.

19. The Hon'ble Apex Court in “**Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and others**, 2009(16) SCC 517” has held that :-

- i) law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate;
- ii) the law as it stands today is windfall for a dishonest person. The law gives seal of approver to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

iii) It could not be comprehended why the law should place premium on dishonesty by legitimizing possession of rank trespasser and compelling the owner to loose its possession only because of his inaction in taking back the possession within limitation

20. With these observations, the Hon'ble Apex Court has asked the Union Government to give fresh look to make suitable changes in the law of adverse possession.

21. As far as question of the parentage of the appellant-plaintiff is concerned, both the learned Courts below have observed that it hardly makes any difference that whether he is son of Hira Singh or someone else, because, as per jamabandi Ex.P-4, the appellant-plaintiff has been able to prove his ownership over the suit property. The statement of the appellant-plaintiff is misread by the learned Courts below that he himself has admitted about the construction of a kothri by the respondent-defendant about 40 years back in the rear portion of the suit property, though he had specifically claimed that the same was raised by the respondent-defendant about two years back. Careful perusal of the cross examination of the appellant-plaintiff shows that he has nowhere admitted as such, rather his deposition speaks about the construction of the house by the respondent-defendant in his own property. To make it more clear, his deposition is only with regard to the construction of the house of the respondent-defendant in his own property and not about the encroachment over the suit property.

22. Learned trial Court ought to have permitted the appellant-plaintiff to examine Field Kanungo to prove report Ex.P-1. It should not have dismissed his suit on the technical ground that demarcation report had not been legally

proved.

23. Since, there was no iota of evidence on behalf of the defendant-respondent, except his bald statement without any corroboration qua his alleged adverse possession over the suit property, therefore, the learned trial Court has wrongly held that the defendant-respondent has been able to prove his possession since last more than 40 years from the time of his forefathers. Accordingly, it is held that both the learned Courts below have erred in dismissing the suit as well as the appeal of the appellant-plaintiff.

24. In view of the discussion above, the appeal is allowed. The judgments of both the Courts below are set aside. The suit of the plaintiff is decreed leaving the parties to bear their own cost.

(RAMENDRA JAIN)
JUDGE

5.12.2015
Ashwani