

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

RSA No.2558 of 1995 (O&M)
Date of decision: 15.7.2015

Kanwal Singh and others

..... Appellants

Versus

Roop Ram alias Ram Sarup (deceased) through LR's and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Ramesh Hooda, Advocate, for the appellants.

Mr. Vikram Punia, Advocate, for respondent No.1.

RAJESH BINDAL, J

The defendants are before this Court impugning the judgment and decree of the learned lower appellate court, whereby the judgment and decree of the learned trial court was set aside in a suit filed by respondent No.1/plaintiff for declaration to the effect that he has become owner of the suit property by way of adverse possession.

The brief facts as are available on record are that the suit was filed by respondent No.1/plaintiff for declaration and permanent injunction. Declaration was sought by respondent No.1 as owner of the suit property, namely, agricultural land bearing Khewat No.629, Khatoni No.715, Killa No.98/22 (8-0), 153/8/2 (4-2), 9 (7-13), measuring 19 kanals 15 marlas situated in village Mehmudpur, Tehsil Gohana, District Sonapat by way of adverse possession. It was claimed that he was in possession of the suit property from the year 1973 onwards. The trial court framed the following issues:-

1. Whether the plaintiff is owner in possession of the suit land by way of adverse possession as alleged? OPP
2. Whether the civil court has no jurisdiction to try the present suit? OPD
3. Whether the suit is malacious? OPD
4. Whether the defendants are entitled to special costs? OPD
5. Relief?

However, considering the evidence produced on record, which did not establish the undisturbed possession of the plaintiff on the suit land, the same was dismissed. The judgment and decree of the trial court was challenged in appeal, whereby the same was reversed. Respondent No.1 was declared to be in possession and owner of the suit property by way of adverse possession. The judgment and decree of the learned lower appellate court has been challenged in the present appeal.

Learned counsel for the appellants submitted that the suit seeking declaration as owner on the basis of adverse possession is not maintainable. In support of his plea, reliance was placed upon the judgment of this Court in Bhim Singh and others v. Zile Singh and others, 2006 (3) RCR (Civil) 97.

Learned counsel for respondent No.1, while not disputing the proposition of law, that the suit filed for declaration, namely, ownership on the basis of adverse possession was not maintainable, however, he submitted that as the plaintiff was found to be in possession of the suit property, he may not be dispossessed except in due course of law.

Heard learned counsel for the parties and perused the paper book.

The following substantial questions of law would arise for determination in the present appeal:-

1. Whether a suit for declaration as owner on the basis of adverse possession is maintainable?
2. Whether findings recorded by the learned court below holding respondent No.1 to be in possession of the suit property are perverse?

As far as question No.1 is concerned, this Court in Bhim Singh's case (supra) opined that a suit for declaration as owner on the basis of adverse possession is not maintainable. Similar view has been expressed by Hon'ble the Supreme Court in Gurudwara Sahib v. Gram Panchayat Village Sirthala and another, 2013 (4) RCR (Civil) 703, wherein, it was opined that declaration cannot be sought to the effect that the adverse possession has matured into ownership. It can only be used as a weapon of defence. Relevant para thereof is extracted below:-

“7. In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable. There cannot be any quarrel to this extent the

judgments of the Courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

Reference can also be made to the judgment of this Court in RSA No.2561 of 1985 titled as Vijay Bhawar and others v. Ajaib Singh (deceased) through his LRs decided on 8.12.2014.

In view of the aforesaid enunciation of law on the issue, answer to question No.1 is that suit for declaration as owner on the basis of adverse possession was not maintainable.

As far as question No.2 is concerned, learned counsel for the appellants while referring to document Ex.D1, pedigree table, submitted that Kidara Singh had four sons, namely, Rura, Risala, Ram Sarup and Matu. Rura had four sons and one daughter, namely, Roop Ram, Bhai Lal, Gyani, Nafe Singh and Bhagwanti. The plaintiff is the son of Rura. Though he claimed in title of the suit to be alias Ram Sarup, however, there are no pleadings to that effect in the plaint. In fact, Ram Sarup son of Kidara Singh was paternal uncle of the plaintiff.

Learned counsel for the appellants further referred to Khasra Girdawaris Ex.P-7 to Ex.P-11, which record that Ram Sarup was in possession of the suit property and not the plaintiff as claimed by him. The aforesaid revenue entries were not challenged by the plaintiff either before the revenue authority or in the present suit. Once plaintiff was not found to be in possession of the suit property, no case for injunction was made out. Hence, findings recorded by the learned lower appellate court on that issue are perverse.

On the other hand, learned counsel for respondent No.1 submitted that Kidara Singh had four sons, namely, Rura, Risala, Ram Sarup and Matu. Rura had four sons and one daughter, namely, Roop Ram, Bhai Lal, Gyani, Nafe Singh and Bhagwanti. The plaintiff is the son of Rura. He further submitted that in the Jamabandi for the year 1973-74 (Ex.P2) produced on record Roop Ram son of Rura Ram was shown to be in

possession of the suit land with status as 'Billa Lagan Bewajah Taswar Malkiat Khud'. In the subsequent Jamabandi for the year 1978-79 (Ex.P3) as well, same entry was there. The error was in the mentioning of names in the Khasra Girdawaries for the year 1984 onwards where Ram Sarup was mentioned as son of Rura Singh son of Kidara Singh. In fact, Ram Sarup son of Kidara Singh had died by that time. Hence, there was error in the Khasra Girdawari. The learned lower appellate court has properly dealt with the issue while noticing the aforesaid aspect and it has been recorded that respondent No.1/plaintiff was in possession of the suit property. Once that is so, he cannot be dispossessed unless in due course of law.

On the other hand, learned counsel for the appellants submitted that the entries in the revenue record carry presumption of truth. Those were neither challenged before any revenue authority nor in the suit in question. In the absence thereof, these cannot be ignored. The view of the learned lower appellate court expressed, while ignoring the revenue record produced on record by the plaintiff himself, is erroneous.

As per the pedigree table produced on record as Ex.D1, Kidara Singh had four sons and plaintiff-Roop Ram (now deceased) was son of Rura. Jamabandis Ex.P2, Ex.P3 and Ex.P1 for the years 1973-74, 1978-79 and 1983-84, respectively, show that Roop Ram son of Rura is in possession of the suit land with the remarks as 'Billa Lagan Bewajah Taswar Malkiat Khud'. The suit was filed on 4.2.1987. Meaning thereby, no jamabandi had been prepared after the year 1983-84. It was in Khasra Girdawari for the period from October 1984 onwards that in the column of possession, name of Ram Sarup son of Kidara Singh was mentioned.

Learned counsel for the appellants sought to rely upon this fact and claimed that once in the revenue record, the name of Ram Sarup was mentioned, who was son of Rura, in fact, he was son of Kidara Singh and possession is not that of the plaintiff. He cannot seek even the relief of dispossession from the suit property unless in due course of law. He has not established from the record that Roop Ram and Ram Sarup were same person. In fact, Ram Sarup was paternal uncle of Roop Ram. However, I do not find any merit in the aforesaid submission. Jamabandi on record for the years 1973-74, 1978-79 and 1983-84 clearly suggest that Roop Ram son of Rura was shown to be in possession of the suit property as 'Billa Lagan

Bewajah Taswar Malkiat Khud'. Thereafter, the only error, which has been pointed out in the Khasra Girdawari is that the name of Roop Ram instead of Ram Sarup was mentioned as son of Rura son of Kidara Singh. Ram Sarup was son of Kidara Singh. It has further been noticed by learned lower court in the impugned judgment and decree that Ram Sarup had in fact, died in the year 1981. Meaning thereby, in October 1984, when the name of Ram Sarup was recorded in the column of possession, he was not alive. That apparently suggests that there was some error in mentioning of his name. Otherwise there is no reason forthcoming on record to justify change in the name. This otherwise also evident from the fact that the error was only in mentioning the name of the person, his parentage was same mentioned earlier in the Jamabandis. There is a presumption of truth regarding entries in the Jamabandis, whereas the same is not with regard to Khasra Girdawari. The learned lower appellate court while appreciating the material produced on record by the parties has taken view that the plaintiff was found to be in possession of the suit property from the year 1973 onwards. The same cannot be said to be perverse for this court to set aside the same. The plaintiff was found to be in possession of the suit property, hence, it is directed that he shall not be dispossessed unless in due course of law.

The appeal is disposed of accordingly.

(RAJESH BINDAL)
JUDGE

15.7.2015

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(Refer to Reporter)