

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

**RSA No.1104 of 2010 (O&M)
Date of decision: 03.09.2015**

Santosh Kumari and others

... Appellants

Vs.

Krishan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Alok Jain, Advocate
for the appellants.

Sandeep K. Sharma, Advocate
for respondents No.1 to 4.

AMIT RAWAL J. (Oral)

Challenge in the present appeal is to the impugned judgments and decrees of both the Courts below, whereby, the suit for possession of suit property against the appellant/defendant No.4 has been decreed, subject to payment of ad valorem Court fee, which was ordered to be deposited on or before 21.04.2008, failing which the suit of the plaintiffs would be deemed to be dismissed.

Mr. Alok Jain, learned counsel appearing on behalf of the appellant/defendant No.4 submits that suit of the respondent/plaintiffs for possession was not maintainable, for the reason that the property at the hands of their vendor, Ram Parkash son of Karam Chand,

appellants were in joint ownership, until and unless the property had not been partitioned. Suit framed as such could not be filed/much less was not maintainable.

The case of the plaintiffs as set out in the plaint was that in the year 1992, they were dis-possessed, therefore, the suit, in the year 1999, had been filed claiming possession on the basis of sale deed, executed in the year 1969 by Ram Parkash, defendant No.1. The dispute in the present suit is with regard to land measuring 20 kanals bearing Rect. No.98, Killa No.3(8-0), 4/1(4-0) and 8(8-0), which is allegedly claimed by the appellants, however, with regard to area owned by the defendants, there is no dispute.

There has been a reference of orders passed by the Consolidation Officers from time to time with regard to allocation of particular khasra numbers. The plaintiffs have relied upon, the order dated 02.08.1977, passed by the Consolidation Officer to claim that the said order would relate back to prove the title as reflected in the year 1969. Since other khasra numbers were also allotted, therefore, khasra number 98/3, 4/1, 8 are also deemed to be in the share of Ram Parkash and accordingly, the appellants have purchased the property from Ram Parkash. The suit on such pleadings was not maintainable as the appellants purchased the same through sale deed dated 13.09.1982 and the same has not been challenged. He further submits that the suit ex facie was time barred, as by using guarded language and skillful pleadings, it has been sought to be

brought within limitation. The trial Court, embarked upon the issue of title, though no issue with regard to same was ever framed. He further submits that as per provisions of Article 64 of the Limitation Act, suit was also time barred, for, as per revenue record, i.e., khasra girdawaries Ex.P11 and Ex.P12 would reflect that the appellants are in possession of suit land. Both the Courts below have committed illegality and perversity in ignoring these fact, erroneously took into consideration a bald averment, that respondent/plaintiffs had been dispossessed in the year 1992, thus, suit was filed in the year 1999, was well within limitation, therefore, following substantial questions of law arise for determination by this Court:-

“i) Whether impugned judgment and decree dated 31.08.2009 passed by the learned Additional District Judge, Rohtak affirming judgment and decree dated 11.04.2008 passed by the learned Civil Judge (Jr. Division), Rohtak, are illegal and perverse and liable to be set aside by this Hon'ble High Court?

ii) Whether suit could be decreed especially when respondent Nos.1 to 4 herein-plaintiffs despite having failed to prove their having ever coming in to actual physical possession of the suit land in pursuance to the order dated 28.10.1980 (Ex.P-15)?

iii) Whether possession of appellant 1 herein-defendant No.3 who had come in possession through

Registered Lease Deed dated 13.08.1982 (Ex.D1) without any objection or interference from any quarter concerned at that time ought to have been protected by the learned Courts below?

iv Whether Article 64 of the Limitation Act, 1963 would govern field in the facts and circumstances of the case?

v) Whether learned Courts below have erred in law in treating the suit for possession to be based on title when respondent Nos.1 to 4 herein, plaintiffs have based their claim on dispossession some where in 1992?

vi) Whether in the light of the fact that respondent Nos.1 to 3 herein, plaintiffs have nowhere sought declaration for declaring the sale deed dated 13.09.1982 to be null and void and not binding upon plaintiff-respondents, herein, more so when no ad valorem Court fee was affixed on the plaint for the said relief and the said relief now granted by the learned Courts below is erroneous in law?"

Mr. Sandeep Kumar Sharma, learned counsel appearing on behalf of the respondents submits that there is no illegality, perversity, much less, no substantial question of law arise for determination by this Court. He further submits that impugned judgments and decrees of the Courts below are based on appreciation of oral and documentary evidence and there is no

limitation to claim possession which has been sought on the basis of the title. Revenue record and other orders passed by the Consolidation Officers, leaves no manner of doubt that respondent/plaintiffs had been allotted the khasra in lieu of other khasras which are in dispute. He further submits that there is no need to challenge the sale deed as the mutation is on account of sale deed dated 8.9.1982 and registered lease deed is 13.08.1982. In support of his aforementioned contention, he has relied upon the following judgments:-

- i. **Swarna Devi and others vs. Mahant Nath Ram Sharma 2005(2) Civil Court Cases 0484**
- ii **R.K.S.Builders vs. Bhupinder Kumar 2001(2) Civil Court Cases 0367.**

Mr. Alok Jain, Advocate, in rebuttal, submits that where the person alleging dispossession, the limitation, as per Article 64 of the Limitation Act, is of 12 years, then question of limitation would definitely come in play. He further submits that where a person is dispossessed then definitely plea of claiming possession on the basis of the title, would not be available to the plaintiffs but would, only apply in those circumstances, where a person has been allotted the land and possession has not been handed over.

In support of his aforementioned contention, he relied upon the judgment of the Hon'ble Supreme Court in **Ramiah vs. Narayana Reddy (dead) by LRs. (2004) 7 Supreme Court Cases**

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He further submits that as per Article 58 of the Limitation Act, the limitation to challenge the sale deed and registered document is three years and vehemently urges for setting aside of impugned judgment and decree.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees, as well as, lower Court record and the case law cited by the learned counsel for the parties to the lis.

Noticing the aforementioned rival contentions of the parties to the lis, only piece of evidence which clinches the issue is whether the suit filed by the respondent-plaintiffs was within a period of limitation or not, for, it is not a case of the plaintiffs that after acquiring the title, they had never been put in possession of the property, therefore, they can seek the possession of the property at any point of time and rigor of the earlier litigation would not come in their way. Khasra girdawari would show that the land measuring 20 kanals bearing Rect. No.98, Killa No.3(8-0), 4/1(4-0) and 8(8-0), was in possession of the vendor, of the appellant/defendant No.3.

No date and month has been mentioned with regard to alleged dispossession. Pleading with regard to dispossession is totally vague and preposterous. No doubt, in some cases, relief of declaration is inherent in a suit for possession, but the instant case is a case of kind, where person had not been put in possession after

acquiring ownership, if the respondent/plaintiffs were in possession of the particular khasra numbers from 1992 onwards, then the suit was required to be filed within limitation, but the documentary evidence is contrary to the pleadings.

There is another aspect of the matter, the sale deed does not describe khasra numbers, whereby, the respondent/plaintiffs purported to have acquired title. Order of consolidation clearly decipher whether the land at the hands of the vendors of the appellants, as well as respondent/plaintiffs, was ever partitioned or not.

Keeping in view such anomalous situation, remedy, in my view for the respondent/plaintiffs was to seek first partition, and, as well as, separate possession.

Be that as it may, plaintiffs did not seek partition, but claimed exclusive possession of the aforementioned khasra numbers under the impression that the property had been partitioned. There is no dispute with regard to the ratio decidendi culled out in the judgment of this Court in Swarna Devi's case (supra), but the fact remains that facts of each and every case have to be seen and decided as per oral and documentary evidence.

In view of the facts noticed above, documentary evidence reveals possession of the vendor of the appellants, was w.e.f.1982 and onwards, whereas, suit has been filed in the year 1999. In my view, rigors of limitation, i.e., Article 64 of the Limitation Act would

definitely come in the way of the respondent/plaintiffs. Even declaration of the sale deed 13.09.1982 had not been sought for.

Time and again, the Courts have deprecated the practice followed by the parties, in using the guarded language and skillful pleading in the suit in order to bring the suit within limitation. The ratio decidendi culled out by the Hon'ble Supreme Court in Ramiah's case (supra) is squarely applicable to the facts and circumstances of the present case.

In view of what has been observed above, the substantial questions of law are answered in favour of the appellant/defendant No. 4 and against the respondent/plaintiffs. Judgments and decrees of the Courts below are set aside.

Accordingly, the appeal is allowed.

(AMIT RAWAL)
JUDGE

September 03, 2015
savita