

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

Regular Second Appeal No.1108 of 2011 (O&M)

Date of decision: 10.3.2015

Shiv Kumar and others

... Appellants

Versus

Manjeet Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Sushil Bhardwaj, Advocate,
for the appellants.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

This is an appeal against the concurrent findings of fact and is directed against the judgment and decree of the learned Civil Judge (Junior Division), Kurukshetra dated 31.10.2008 affirmed by the learned ADJ, Kurukshetra on 13.11.2010 dismissing the suit.

2. The plaintiffs are the appellants in the appeal. They filed a suit for possession along with mesne profits on the ground that they are owners of the suit land measuring 7K-12M comprised in Khewat No.524 Khatoni No.747, Rectangle No.244, Killa No.16 (7-12) as per jamabandi for the year 1997-98 situated at village Kirmach; that previously their father Ram Sarup was owner of the suit land as per jamabandi for the year 1963-64; that prior to the consolidation of holdings, the suit land was part of khasra No.578/1min, and after consolidation the suit land was allotted khasra

No.16; that earlier their father and predecessor Ram Sarup had filed an application in Form L before the Asstt. Collector 1st Grade Karnal for ejectment against Inder Singh etc. who had denied the relationship of landlord and tenant between the parties; that the said AC Ist Grade Karnal dismissed the said application and the parties were left to seek their remedy before the appropriate forum; that the appeal against the said order of AC Ist Grade was also dismissed vide order dated 27th November, 1969; that the said orders are null and void being without jurisdiction; that as the defendants, their predecessors-in-interest and late Inder Singh had denied the relationship of landlord and tenant between the litigating parties and as such had forfeited their tenancy and thus their possession on suit corpus is unauthorized; that the said Inder Singh died leaving behind no issue and the defendants are in illegal and unauthorized occupation of the suit land; that the defendants failed to deliver the possession of the suit land, hence the suit was filed. The ownership of the suit land was claimed by way of a family settlement.

3. The defendants contested the suit but did not dispute that the predecessors-in-interest of the plaintiffs are recorded as owners of the suit land in the revenue record but they are actually not true owners. A plea of adverse possession was set up in defence of the suit since the time of consolidation which has divested the plaintiffs of their rights as owners in possession, which rights they do not have since they claimed possession in the suit. It was submitted that an application in Form 'L' was filed by some person alleging that the suit land was being cultivated on *Batai*. The allegation of tenancy was denied and ownership was claimed by the

defendants and their predecessors. Since 27th November, 1969, neither the plaintiffs nor their predecessors-in-interest or anybody else claimed the ownership of the suit land and, thus, their possession has ripened into ownership with the passing of 12 years from the date of the orders passed in the application in Form 'L' by the revenue authorities and their possession is open, hostile and continuous. 8 issues were framed, of which onus of 7 of them rested on the defendants while on issue No.1 i.e. whether the plaintiffs are entitled for a decree for possession along with mesne profits, was placed on the plaintiffs. DW1 Shiv Kumar son of Ram Sarup deposed in his cross-examination that the Girdawaris of the disputed land was not in the names of the plaintiffs; the defendants are in possession; at the time of consolidation also, it was in possession of the defendants. He deposed that his father used to take rent from the defendants but the witnesses did not take any rent from them. He deposed that the defendants took forcible possession over the disputed land about 7-8 years back but he never complained of it to the police at a police station in this respect. The opposite party have never cultivated the suit land.

4. It is worthy of note that the plaintiffs' predecessors-in-interest were the ones who had filed an application Ex.D4 under Form 'L' before the Assistant Collector, 1st Grade, Karnal in which the defendants denied the relationship of landlord and tenant. While deciding the application, the revenue Courts expressed its doubt over the relationship between the parties and, therefore, gave no findings thereon and rejected the application vide order dated 29th April, 1969 leaving the parties to seek their remedies before the appropriate Forum. As said before the appeal against the order was

dismissed on 27th November, 1969. On failure to establish the tenancy before the revenue Court, the present suit for possession was filed. The plaintiff's plea of family settlement failed to convince the Courts *a quo* as no evidence was adduced on the file to prove the factum of settlement and a mere self-serving statement of the plaintiff was not sufficient evidence in proof of fact asserted.

5. Plaintiff Shiv Kumar appearing as PW1 deposed in his cross-examination that the rent was paid by the defendants to their father but there is no receipt on file to prove the assertion. Learned trial Court has recorded a finding on the basis of the evidence that there is nothing on the file to show that the defendants and their predecessors-in-interest ever paid rent to the plaintiffs. The defendants had denied tenancy on which the orders of the revenue Court was passed in 1969 but the predecessors-in-interest of the plaintiff never made any effort to file a suit to get their title declared. The possession of the defendants turned hostile and open from the date of denial of claimed tenancy. Till 1969, both the parties were litigating and, therefore, the trial Court inferred that the defendants will be deemed to be in adverse possession since 1969 which has resulted in maturing of ownership rights by lapse of the statutory period for such rights to mature. Another important fact has been noticed by the learned trial Court that earlier also, a suit for possession was filed in 1987 by some of the applicants in Form 'L' in the Court of Senior Sub Judge, Kurukshetra against the defendants and their predecessors which was dismissed on 3rd June, 1991 vide judgment Ex.D5 placed on the file in which the claim of adverse possession of the defendants and their predecessors was admitted. The trial Court noticed that the

plaintiffs failed to implead the legal representatives of the deceased Inder Singh and, therefore, no decree could be passed in their absence. Thus, the suit was bad for non-joinder of necessary parties and for this reason as well, the suit is not maintainable. Still further, the orders of the revenue Courts are still subsisting and a declaration has not been sought that they are illegal, null and void. The argument of the plaintiffs that mere long possession does not ripen into adverse possession may be a correct statement of law but is of no help to them in the present case on the facts on record. The suit was filed in 2001. The limitation for a suit for possession based on title had expired when it was instituted. Therefore, the learned trial Court concluded that the suit was barred by limitation. The plaintiffs were of the belief that adverse possession was claimed for the first time in the written statement filed in the suit and, therefore, the suit is not barred by limitation nor can the period be reckoned from 1969, is an argument which has not found favour of the Courts *a quo* has thus been rejected by the learned trial Court on returning the finding that the defendants are in possession of the suit land since 1969 without paying any rent and, therefore, the suit was hopelessly time barred.

6. Aggrieved by the judgment and decree of the trial Judge, the plaintiffs preferred an appeal before the learned ADJ, Kurukshetra on 27th November, 2008 against the decree which has been rejected. Learned lower Appellate Court has endorsed the view of the learned trial Court but with a little more articulation. The lower appellate Court has held that when the appeal was dismissed by the Collector, Karnal at the hands of Inder Singh etc, , the predecessors of the defendants claimed unauthorised possession in

the year 1969, then the possession turned hostile and open and unauthorized by denial of tenancy which state of affairs continued from the year 1969 till 2001 i.e. for 32 years and as per article 65 of the Limitation Act, 1963, the suit for possession of immovable property can be filed within a period of 12 years from the date when the possession of the defendants becomes adverse to the plaintiffs and thus by effluxion of time, their adverse possession has perfected into title. That is why, a suit for declaration was not filed or risked by the plaintiffs but a suit was brought merely for possession since a suit for declaration would not have accommodated a plea of adverse possession by the plaintiffs, as adverse possession is a defence plea alone. The plaintiffs cannot claim adverse possession but only the defendants can. The lower Appellate Court correctly analyzed that when the defendants raise a plea of adverse possession, then title of the plaintiffs is inversely admitted. It may be that entries in the Jamabandi carries a presumption of truth as per Section 54 of the Punjab Land Revenue Act, 1887 but this does not mean that a defendant cannot remain successful on his plea of adverse possession which is shown to be open and hostile for over 12 years notwithstanding the revenue entries. Learned counsel for the appellant has placed reliance on **Inder Singh Kataria v. Kedar Nath**; 2007 (4) RCR (Civil) 64, **T.Anjanappa and others v. Somalingappa and another**; 2007 (1) RCR (Civil) 19, **Basant Kaur (dead) through her LRs and others v. Bhag Singh and others**; 2011 (3) RCR (Civil) 543, **P.T.Munichikkanna Reddy & others v. Revamma and others**; 2007 (2) RCR (Civil) 847 and **Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan & others**; 2009 (16) SCC 517 in support of plaintiffs.

7. The defence by way of adverse possession is a right which comes into play not just because someone loses his right to reclaim property out of continuous and willful neglect but also on account of possessor's intention to dispossess. Therefore, the intention implies knowledge on the part of the adverse possessor. The adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the proper owner. In the present case, it was the plaintiffs who went to the Assistant Collector Grade-I in an application in Form 'L' under the Punjab Security of Land Tenures Act, 1953 to press their rights against the defendants and their predecessors where tenancy was denied which was a hostile act. The appeal failed in 1969 and therefore I do not think that both the Courts below committed any substantial error in concluding that the possession turned hostile and open in 1969 and continued till presentation of the suit. Therefore, the judgments relied upon by the appellants are not in point.

8. In view of judgment in **Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan & others**; 2009 (16) SCC 517, any legislative changes brought about as a result of the orders of the Supreme Court while dismissing this appeal, the right, if any, of the true owner/appellant is kept open, in case legislative changes are brought about as suggested by the Supreme Court to dismantle the archaic law of adverse possession so that it is rationalized on sound principles of statutory and constitutional rights to ownership of property.

9. Except to the limited extent as above, the appeal fails and is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

March 10, 2015
Paritosh Kumar