

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

**RSA No.698 of 2012 (O&M)
Date of decision : March 17, 2015**

Manohar Pal @ Mahender Pal and others

.....Appellants

Versus

Shamlat Patti Gorva Palwal and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

1. To be referred to the Reporters or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

Present : Mr. R.S. Hooda, Advocate for
Mr. J.S. Hooda, Advocate,
for the appellants.

Mr. R.M. Singh, Advocate,
for respondent No.4.

Mr. Yashpal Thakur, Advocate
for respondent Nos. 6 to 8.

GURMIT RAM, J.

1. This regular second appeal has been preferred by the appellants (plaintiffs) against the judgment and decree dated 08.02.2010 passed by the Court of learned Civil Judge (Junior Division), Palwal vide which suit of the plaintiffs for declaration and mandatory injunction was dismissed with costs and the judgment and decree dated 15.09.2011 passed by the learned

Additional District Judge, Palwal vide which the appeal filed against the aforesaid judgment and decree dated 08.02.2010 was also dismissed with costs.

2. The case of the appellants (plaintiffs) before the learned trial Court in brief was that they are the owners of the land measuring 1 kanal and 11 marlas out of the land in dispute measuring 2 kanals and 11 marlas comprising Khasra No.1345 situated within the revenue estate/municipality limits, Palwal. The appellant/plaintiff No.1 was the co-owner to the extent of $\frac{1}{2}$ share, appellants/plaintiff Nos.2 to 4 to the extent of $\frac{1}{4}$ th share and appellant/plaintiff Nos.5 and 6 to the extent of $\frac{1}{4}$ th share in the land in dispute. It is further their case that their predecessors-in-interest namely Kundan, Fattey, Dhanna sons of Shyam Lal and Durga and Shankar Lal sons of Shyam Lal and Durga Shankar Lal sons of Ram Lal and Mohan Lal son of Bansi had occupied the land in dispute about more than 100 years ago and their possession on this land was continuous, open and hostile to the knowledge of the respondents/defendants as well as to the entire world. The appellants/plaintiffs are the successors of aforesaid Durga and Shankar Lal. The remaining occupants of the land in dispute namely Kundan, Fattey, Dhanna and Mohan Lal had surrendered their possessory title in favour of aforesaid Durga and Shanker Lal and as a result thereof, the predecessors of the plaintiffs (appellants) had become exclusive occupants of the land in dispute. The possession of their predecessors over the land in dispute became adverse to the respondents/defendants etc. since 01.08.1942 and, as such, they became the owner of the land in dispute, by way of

adverse possession on 14.08.1954. Though the predecessors of plaintiffs (appellants) had acquired the status of owners of the land in dispute, even then the entry in the revenue record did not change reflecting them as merely occupant in the column of possession of record of rights. Their predecessors had also constructed a drinking water shelter (*Piao*), besides, developing a garden on the land in dispute about 70 years ago. Then this land remained under the occupation of appellants/plaintiffs till January, 1996. Then due to some compelling circumstances, they stopped visiting Palwal by the end of 1995, since they started residing for the last few years away from Palwal. Since this land was of a potential value, so some land grabbers of the town started keeping an evil eye on it. Respondents/defendants No.5 and 6 with an ulterior motive to grab the land in dispute had attempted to take its forcible possession in the month of January, 1996. Even, they also got themselves recorded in possession of land in dispute illegally on the basis of some void and illegal order dated 15.01.1996 and vide *Roznamcha* dated 25.03.1997. It was further their case that the order dated 15.01.1996 passed by the Assistant Collector IInd Grade, Palwal for correction of *Girdwari* qua the land in dispute was also illegal, null and void, since no notice was given to the appellants (plaintiffs). The said respondents No.5 and 6 might have filed the application of case No.11, N.T. against the dead persons. Then it was also their case that respondents/defendants No.5 and 6 have also got procured a sale deed dated 07.08.1992 in their favour registered on 14.08.1992 qua the land in dispute from some persons, who themselves were having no title qua

the land in dispute. The entry made in the revenue record showing them to be the owners of suit land on the basis of said sale deed was also stated to be illegal, null and void, hence creating no title in favour of respondents/defendants No.5 and 6 qua the land in dispute. As such the said sale deed and mutation No.24000 did not affect the right, title and interest of the appellants (plaintiffs) qua the land in dispute in any manner.

The appellants/plaintiffs requested the respondents/defendants several times to admit their claim qua the land in dispute and also to get the revenue entry corrected in their favour to which they refused, which resulted into filing of instant suit.

3. Notice of suit was given to the defendants/respondents. Defendants No.1 to 4, 7 and 8 were proceeded ex parte before the learned trial Court. Defendant No.5 in his written statement took preliminary objections that suit is not maintainable and that plaintiffs have no locus standi/cause of action to file this suit. On merits it was denied that the appellants (plaintiffs) were the owners in possession of the land in dispute. It is further their case that the appellants (plaintiffs) as well as respondents/defendants No.1 to 4 have no right or interest in the land in dispute of any sort. Answering respondent/defendant is the owner in possession of the land in dispute to the extent of 30/100 share vide sale deed dated 14.08.1998 as a bona fide purchaser for valuable consideration. It was also denied that Kundan, Fattey, Dhanna, Durga, Shankar Lal and Mohan Lal, the alleged predecessors-in-interest of appellants (plaintiffs) had ever occupied land in dispute about more than 100 years back as alleged

in the plaint.

4. Defendant No.6 in his written statement also took same very preliminary objections as taken by defendant No.5. He had also claimed that he is a bona fide purchaser for a value consideration of the land in dispute. He had already got raised some construction over this land by incurring huge expenditure, after obtaining sanction from Municipal Committee, Palwal. Now, he is in possession of land in dispute as a lawful owner.

5. The preliminary objections taken by defendant Nos.7 and 8 in their written statement were also identical as that of defendant Nos.5 and 6. They supported the plea that defendant No.6 is in possession of land in dispute as owner. Rest of the averments of the plaint were also denied by them.

6. The learned trial Court after hearing the counsel for both the parties and perusing the record as well recorded the findings on issues No.1 to 4 against the plaintiffs (appellants), on issues No.5 and 6 against the defendants (respondents) and dismissed the suit of the plaintiffs (appellants) vide the impugned judgment and decree dated 08.02.2010. The appeal preferred against this judgment and decree was also dismissed by the learned Additional District Judge, Palwal vide impugned judgment and decree dated 15.09.2011.

7. Being dissatisfied with the findings of both the Courts below, the appellants have now come up before this Court by way of instant appeal.

8. I have heard the learned counsel for both the parties and also

perused the record as available on the file with their valuable assistance.

9. Learned counsel for the appellants has contended that the impugned judgments and decrees passed by both the Courts below are perverse, inadequate and based on mis-interpretation of law. It is also his contention that these are also merely based on conjectures and surmises despite the fact that there is sufficient evidence on record and as such are liable to be set aside. Further he has reiterated the stand as taken by the appellants (plaintiffs) in their plaint and prayed that this appeal be accepted and the impugned judgments and decrees passed by both the Courts below be set aside. Further he has also prayed that suit as filed by the plaintiffs (appellants) be decreed as prayed for.

10. In this case, it was the stand of the appellants before the learned Trial Court that they became the owner of the land in dispute by way of adverse possession and in support of this plea, they brought on the file revenue record i.e. copy of Jamabandi Ex.P2 and Ex.P3 for the year 1986-87 and 1991-92 respectively, copy of mutation Ex.P4 and copy of *rapat rojnamcha* Ex.P5, besides, documents Ex.PX, Ex.PX/H and EX.PY. But this plea of adverse possession is not available to the present appellants (plaintiffs), since such like plea is available to the defendants/respondents only in defence. The learned trial Court as well as the Appellate Court while recording this finding has rightly followed case laws as laid down in ***Bhim Singh vs. Zile Singh, 2006(3) PLR 159*** and ***Gurdwara Sahib Sannauli vs. State of Punjab and others, 2009 (2) PLR 756***. The principle laid down in these case laws is further followed by this Court in ***Jeet Singh***

(since deceased) through LRs vs. Molu Ram (since deceased) through LRs 2010 (3) PLR 366.

11. Then it was the case of the appellants/plaintiffs that vendors of defendants/respondents No.5 and 6 were not the owners of the suit land and, as such, the sale deed executed by them in favour of respondents/defendants No.5 and 6 did not convey any valid title in their favour qua this land. Respondents/defendants No.5 and 6 had purchased suit land from Jai Ram, Hargovind, Chhiddi and Gyanender Pal. Then the record Ex.D2 to Ex.D6 depicts that said Gyanender Pal etc. were having their share in the land of Gorwa Patti, Palwal who sold the land less than their share to said respondents No.5 and 6 vide sale deeds Ex.D1 and Ex.DW4/B. So in this situation the said both the sale deeds were rightly executed by the vendors who were the lawful owners of the land in dispute at that time and mutation in question has also been rightly, sanctioned, entered and attested. The order dated 15.01.1996 as mentioned in the plaint was also rightly passed by Assistant Collector IInd Grade, Palwal.

12. Then the appellants (plaintiffs) had failed to establish on the file that they were in possession of the land in dispute, when the instant suit was filed and that they were dispossessed therefrom during the pendency of suit by respondents/defendants forcibly and illegally. So on this ground, they do not deserve for the relief of mandatory injunction also. Even it was admitted by PW-1 (Brij Kishore) in his cross-examination that at the time of filing of the instant suit, the appellants(plaintiffs) were not in possession of the land in dispute. They also did not seek the relief of possession vide this

suit. It is the settled law that simple suit for declaration without claiming possession is not maintainable.

13. In the light of the above discussion, the findings recorded by both the Courts below are found to be correct and lawful. There is no ground to warrant any interference in the impugned judgments and decrees. So this appeal being meritless stands dismissed and disposed of accordingly.

14. Copy of this order be sent to the quarter concerned for the compliance.

March 17, 2015

Gaurav Sorot

**(GURMIT RAM)
JUDGE**