

In the High Court of Punjab and Haryana at Chandigarh
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(1) R.S.A. No.1366 of 2013 (O&M)
.....

Date of decision:8.4.2015

Shri Chand
.....Appellant
v.

Dharampal and others
.....Respondents
....

(2) R.S.A. No.2147 of 2013 (O&M)
.....

Dalip
.....Appellant
v.

Dharampal and others
.....Respondents
....

(3) R.S.A. No.2155 of 2013 (O&M)
.....

Ishwar Singh and another
.....Appellants
v.

Dharampal and others
.....Respondents
....

Coram : **Hon'ble Mr. Justice Inderjit Singh**
.....

Present: Mr. Rajesh Sheoran, Advocate for the appellants.

Mr. Anil Ghangas, Advocate for the respondents.

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Inderjit Singh, J.

This order will dispose of the above mentioned three regular second appeals filed by Shri Chand, Dalip, Ishwar Singh and Shishpal appellants-plaintiffs against Dharampal, Sedha Ram, Gaja Nand, Dhanpat and Meer Singh respondents-defendants as similar point arises for determination in these appeals.

Notice of motion was given in these cases. Mr. Anil Ghangas, learned Advocate put in appearance on behalf of the respondents and contested these petitions. Lower Courts records were also summoned which have been received.

The brief facts are taken from one case i.e. R.S.A. No.2147 of 2013 filed by Dalip-appellant against Dharampal and others, which are almost similar. Plaintiff-Dalip filed suit for declaration to the effect that he is owner in possession of the 'Gair Mumkin' land comprised in Khewat No.8 Min. Khasra No.171 (1-9), measuring 1 Kanal 9 Marlas, as per Jamabandi for the year 2000-2001, situated at Village Gignow, Tehsil Loharu for the last 60 years ago and residing therein along with family members, after constructing residential house and the possession of the plaintiff over the suit land is hostile to the knowledge of everyone including defendants and their father and he has also become owner of the suit land, by way of adverse possession and the defendants have no right or concern whatsoever with the same and the entries in the revenue record showing

defendants as owners, are wrong, against law and facts, null & void, not binding on the rights of the plaintiff and liable to be corrected as such and further suit for permanent injunction restraining the defendants from alienating the suit land or raising any kind of construction thereon.

In all the cases, the suits have been filed by the plaintiffs mainly averring for declaration that they have become owners of the suit property on the basis of adverse possession. The defendants are the same persons in all the appeals i.e. Dharampal, Sedha Ram, Gaja Nand, Dhanpat and Meer Singh. The case of the plaintiffs was denied in the written statements filed by the defendants. The suits of the plaintiffs in all the cases were decreed by Additional Civil Judge (Senior Division) by separate judgments and decrees of dated 10.2.2011. Then the appeals have been filed by the defendants Dharampal etc. before the learned Additional District Judge, Bhiwani against the judgments and decrees dated 10.2.2011 passed by the learned Additional Civil Judge (Senior Division), Loharu. The learned District Judge, Bhiwani vide separate judgments and decrees of 10.1.2013 accepted the appeals and the judgments and decrees passed by the lower Court are set aside and the suits of the plaintiffs are dismissed.

Aggrieved against these judgments and decrees dated 10.1.2013 of the learned Additional District Judge, Bhiwani, the present regular second appeals have been filed.

After hearing learned counsel for the parties and going through the record, I find that the substantial question of law in these appeals arises as follows:-

“Whether the suit for declaration as owner in possession on the basis of adverse possession is maintainable or not?”

Learned counsel for the respondents argued that the suit for declaration on the basis of adverse possession is not maintainable. Only the defendants can take the defence of adverse possession. In other words, the pleas of adverse possession is available only as defence. Learned counsel for the respondents placed reliance on the judgment of this Court in Jeet Singh (since deceased) through LRs v. Molu Ram (since deceased) through LRs, 2010 (2) R.C.R. (Civil) 650, in which this Court after discussing the law in para 16 held as under:-

“16. In **Bhim Singh and others v. Zile Singh and others**, **2006 (3) R.C.R. (Civil) 97:2006 (3) P.L.R. 159**, this Court again held as under:-

“11. Under Article 64 of the Limitation Act, as suit for possession of immovable property by a plaintiff, who while possession of the property had been dispossessed from such possession, when such suit is based on previous possession and not based on title, can be filed within 12 years from the date of dispossession. Under Article 65 of the Limitation Act, a suit for possession of immovable property or any interest therein, based on title, can be filed by a person claiming title within 12 years. The limitation under this Article commences from

the date when the possession of the defendant becomes adverse to the plaintiff. In these circumstances, it is apparent that to contest a suit for possession, filed by a person on the basis of his title, a plea of adverse possession can be taken by a defendant who is in hostile, continuous and open possession, to the knowledge of the true owner, if such a person has remained in possession for a period of 12 years. It, thus, naturally has to be inferred that plea of adverse possession is a defence available only to a defendant. This conclusion of mine is further strengthened from the language used in Article 65, wherein in column 3 it has been specifically mentioned “when the possession of the defendant becomes adverse to the plaintiff”. Thus, a perusal of the aforesaid article 65 shows that the plea is available only to a defendant against a plaintiff. In these circumstances, natural inference must follow that when such a plea of adverse possession is only available to a defendant, then no declaration can be sought by a plaintiff with regard to his ownership on the basis of an adverse possession.

12. I am supported by a judgment of Delhi High

Court in **(1993-3) 105 Punjab Law Reporter (Delhi Section) 70 – Prem Nath Wadhawan v. Inder Rai Wadhawan.**

13. The following observations made in the Prem Nath Wadhawan's case (supra) may be noticed:

“I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and have also perused the record. I do not find any merit in the contention of the learned counsel for the plaintiff that the plaintiff has become absolute owner of the suit property by virtue of adverse possession as the plea of adverse possession can be raised in defence in a suit for recovery of possession but the relief of declaration that the plaintiff has become absolute owner, cannot be granted on the basis of adverse possession.”

In para 22 of the judgment, it was held as under:-

“22. For the reasons which have been stated in the foregoing paragraphs, I hold that the plea of adverse possession is available only as a defence and in the absence of particulars regarding it becoming hostile and open, such a plea cannot be answered and further the plea of ownership and

adverse possession cannot co-exist with each other
and further that the mere non-payment of rent will
not put an end to the relationship of landlord and
tenant so as to declare the possession to be open
and hostile to the true owner.”

On the other hand, learned counsel for the appellants has not placed reliance on any law that the plaintiff can file a suit on the basis of adverse possession.

Keeping in view the law laid down by this Court as discussed above, the suits filed by the plaintiffs for declaration on the basis of adverse possession are not maintainable. As the suits are not maintainable, therefore, this Court need not to discuss whether the plaintiffs' possession is by way of adverse possession or a permissible possession in these cases.

As the first appellate Court has already dismissed the suits of the plaintiffs-appellants, therefore, in view of the above discussion, the suits of the plaintiffs in all the cases are liable to be dismissed.

Therefore, finding no merit in these regular second appeals, the same are dismissed.

April 8, 2015.

(Inderjit Singh)
Judge

hsp