

103

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

RSA No.2418 of 2013

Date of Decision: 03.11.2015

Mohinder Kaur

.....Appellant

VS

Surakshat Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Satbir Rathore, Advocate
for the appellant.

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

RAJ MOHAN SINGH, J.

[1]. Plaintiff has filed this Regular Second Appeal against concurrent judgments and decrees passed by the Courts below.

[2]. Plaintiff Daler Singh deceased through Mohinder Kaur widow filed suit for declaration to the effect that plaintiff is owner in possession of 6 *Kanals* 4 *Marlas* of land as depicted in the plaint. In alternate relief of declaration to the effect that plaintiff is joint owner of 6 *Kanals* 4 *Marlas* of land out of 14 *Kanals* 4 *Marlas* was also sought.

[3]. The case of the plaintiff is that the plaintiff had purchased the suit land from defendants No.1 to 5 vide registered sale deed dated 19.08.1980 and possession was duly delivered to him at the time of execution of sale deed. Being in continuous possession plaintiff constructed his

residential house in the suit land in the year 1987. Thereafter plaintiff had made addition in *khasra* numbers 26//19/1 and partly in 19/2.

[4]. In the year 1989 defendant No.11 filed a suit for permanent injunction vide civil suit No.968/1991 in respect of *khasra* number 26//17 which was dismissed as withdrawn. Mutation No.4678 was entered on the basis of sale deed dated 19.08.1980, but the same was rejected as title of the vendor was found to be defective.

[5]. It has been pleaded that the plaintiff became owner of 2 *Kanals* 5 *Marlas* of suit land out of 14 *Kanals* 5 *Marlas* as vendor had acquired interest in the said property by transfer. Therefore, due to mistake of Halqa Patwari and on account of non-sanctioning of mutation, *khasra* number could not be entered in the name of the plaintiff whereas plaintiff remained in possession of the suit land since 19.08.1980. Plaintiff moved an application for correction of *khasra girdawari* which was decided in his favour on 16.08.1990 and *khasra girdawaris* from Sauni 1987 till date was ordered to be corrected by the Naib Tehsildar, Talwara, however again Halqa Patwari did not enter the name of the plaintiff in the revenue record and in this way the entries in the revenue record have been claimed to be illegal.

[6]. Plaintiff alleged that his possession is open, continuos,

adverse and hostile to the defendants and the plaintiff filed a suit for permanent injunction against the defendants which was decreed vide judgment and decree dated 12.10.1984 by the trial Court. With this background suit came to be filed.

[7]. The suit was contested by the defendants on the ground of non-maintainability, *locus standi*, no cause of action, estoppel, suit barred under Order 2 Rule 2 CPC and on the ground of limitation. On merits defendants alleged that they have purchased 12 Kanals from Surakshat Singh, Parkash Devi, Malkiat Singh, Paramjit Singh, Sham Kumari etc. vide registered sale deed dated 15.07.1974. The sale deed in favour of defendants was executed prior to the sale deed dated 19.08.1980 executed in favour of the plaintiff and, therefore, the sale deed of the defendants should prevail.

[8]. Following issues were framed by the trial Court:-

- “1. Whether the plaintiff is entitled to the declaration as prayed for? OPP
2. Whether the suit is within limitation? OPP.
3. Whether the suit is not maintainable? OPD.
4. Whether the plaintiff has no cause of action to file the present suit? OPD.
5. Whether the plaintiff has no locus standi to file the present suit? OPD.
6. Relief.”

[9]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[10]. Trial Court dismissed the suit and the plaintiff remained unsuccessful in First Appeal also.

[11]. I have heard learned counsel for the appellant at some length.

[12]. The case of the plaintiff is that he is owner in possession of suit property on the basis of sale deed Ex.P-1 and mutation could not be sanctioned in his favour due to defective title of his vendor. On the other hand, case of the defendant No.10 is that he had purchased the suit land vide sale deed Ex.D-1. For proving execution of sale deed Ex.P-1, plaintiff examined PW-4 Piara Singh, Lambardar as attesting witness. Plaintiff produced original sale deed Ex.P-1 on record.

[13]. The defendants have not disputed the sale deed Ex.P-1 executed by Surakshat Singh in favour of plaintiff, on the other hand, defendant No.10 has claimed ownership and possession on the basis of sale deed Ex.D-1 executed by Surakshat Singh, Parkash Devi, Malkiat Singh, Paramjit Singh and Sham Kumari etc. which is prior in point of time and, therefore, this sale deed should prevail.

[14]. The case of the plaintiff is that the mutation No. 4678

was entered in his favour, but the same was rejected due to defective title of his vendor Surkashat Singh, but the plaintiff failed to examine the revenue officials, nor he proved documentary evidence in respect of rejection of mutation. On the other hand, defendant proved mutation No.3861 which was sanctioned in his favour and proved the *Jamabandi* Ex.P-6 which reflected sanctioning of mutation No.3861 in favour of defendant No.10. The correction as alleged by the plaintiff vide order Ex.PC, holding the plaintiff to be in possession of the suit property since 1987 till date, was not on the basis of sale deed Ex.P-1. A photocopy of order Ex.PC has been produced on record which is not admissible in evidence.

[15]. Admittedly, plaintiff filed civil suit titled as Daler Singh vs. Ranjit Singh and others for permanent injunction in respect of suit property which was decreed vide judgment and decree Ex.P-D and Ex.PE, but the plaintiff was not held to be owner of the suit property, however he was held to be in possession of suit property. Since there was no issue of ownership in the said suit, therefore, plaintiff proved his possession in that suit. Additionally Ranjit Singh defendant No.1 in his cross-examination has admitted that plaintiff is in possession of the suit property. Similarly, Karam Singh DW-2 has also admitted plaintiff to be in possession in his cross-examination. Since the

defendants have admitted the possession of the plaintiff over the suit property, therefore, the admission made by the defendants need not to be proved.

[16]. Plaintiff has sought relief of declaration and joint possession as well as adverse possession. Plaintiff has claimed ownership and possession on the basis of sale deed Ex.P-1. This sale deed relates to *khasra* numbers 26//18 and 26//19, whereas in the pleadings plaintiff has claimed suit property bearing *khasra* numbers 26//19/1 and 26/19/2 and further joint possession of suit land bearing *khasra* numbers 26//17,18 and 19/2. Therefore, pleadings are different from sale deed Ex.P-1. A decree cannot be formed on the basis of contradictory pleadings.

[17]. *Jamabandi* Ex.P-9 and *khasra girdawari* Ex.P-10 proved the plaintiff's possession as *gair marusi*. The inception of these entries have not been proved in the absence of continuity, the entries are to be treated as single stay entry in the name of a party who has not proved ownership and possession.

[18]. Contention of Mohinder Kaur PW-6 that Daler Singh had executed Will Ex.P-1/A in her favour and Bakshish Singh PW-5 was the attesting witness of the said Will. Thus, the execution of Will was duly proved and defendants did not disprove the Will. The defendants have stated that Daler Singh

never executed any Will Ex.P-1/A in favour of his wife Mohinder Kaur and the plaintiff has not proved the Will on record. Since the Will in question is not the contentious issue between the parties in the present suit, no issue has been framed on this aspect, nor it was in issue at all. No pleading of the plaintiffs have come forth in respect of Will Ex.P-1/A. Even if some evidence has come on record with regard to pleadings of the parties the same is of no consequence.

[19]. The foundation has to be made and, therefore, evidence has to be led. Evidence without foundation is inconsequential. The contention that the plaintiff has become owner of 2 *Kanals 5 Marlas* of land out of 14 *Kanals 5 Marlas* as the vendor had acquired interest therein by transfer has also ended in futility as the plaintiff failed to prove that there was a defective title of vendor, and thereafter vendor acquired 2 *Kanals 5 Marlas* of land. Since there is no documentary evidence to that effect, therefore, this contention of the plaintiff also ended in futility.

[20]. Issue No.1 as framed has to be answered against the plaintiff. So far as the limitation is concerned, the sale deed is alleged to have been executed on 19.08.1980, but the suit came to be filed only in the year 2000 i.e. after a gap of about 20 years which in considered opinion of this Court, is time barred.

Since the plaintiff has failed to prove his case, therefore, the suit itself was not maintainable under issue No.3 and there was no cause of action and *locus standi* available to the plaintiff.

[21]. In view of Full Bench judgment of this Court in **Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I**, framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clauses (a) to (c) of Section 100(1) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim "*interest reipublicae ut sit finis litium*".

[22]. The plaintiff/appellant has formulated the following questions of law in para 4 of the grounds of appeal.

- “(i) *Whether judgments and decree passed by both the Courts below are against law, evidence and facts on record?*
- (ii) *Whether the suit of the plaintiff/appellant is not*

liable to be decreed in view of the evidence led by her?

(iii) Whether benefit will not go to make sale or transfer as good to the extent vendor acquires title after transfer?

(iv) Whether the suit of the plaintiff/appellant could have been validly/legally dismissed by Id. Both the Courts below?

[23]. Question No.1 as formulated does not arise inasmuch as that there is no evidence on record to substantiate the plea of plaintiff in the context of his title arising from sale deed dated 19.08.1980 as the title of his vendor was found to be defective. Acquisition of title in respect of 2 *Kanals* 5 *Marlas* of land at a subsequent stage has not been substantiated by any cogent proof on record. In view of aforesaid, both the Courts below have rightly concluded that the plaintiff has not led any evidence to prove his title over the suit land. The plaintiff cannot claim adverse possession being a weapon of defence. Even otherwise, material particulars of adverse possession viz. date of commencement of possession, nature of possession, factum of possession, knowledge to the true owner, length of possession, whether possession was open and hostile and to the very knowledge of the true owner have to be proved.

[24]. On the other hand, learned counsel for the respondents

has contended that if the tenant denies the status and sets up title anterior to the suit, the same amount to forfeiture of his right to continue as tenant and cannot plead the provisions of Punjab Tenancy Act in his defence against ejectment.

A mere possession or permissive possession does not demonstrate spectrum of adverse possession. For claiming adverse possession, the defendants must prove that their possession, is “*nec vi, nec clam, nec precario*”, i.e. peaceful, open and continuous. The possession should be actual, open, notorious, exclusive and continuous for the required time as provided in law. The necessary ingredients of adverse possession as enumerated in **2004 (2) RCR (Civil) 702** titled as **Karnataka Board Wakf Vs. Government of India** are that the adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. A party claiming adverse possession must prove that his possession is “*nec vi, nec clam, nec precario*” i.e peaceful, open and continuous and it should be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the original owner and is actual, visible, exclusive, hostile and continues over the statutory period. Plea of adverse possession is not a pure question of law, rather it is a mixed question of law

and facts. A person who claims adverse possession, must show; (a) On what date, he came into possession; (b) What was the nature of his possession; (c) Whether the factum of possession was known to other party (d) How long his possession had continued; (e) His possession was open and undisturbed. Plea of adverse possession has no equities rather this right has some instinct of piratical rights. The person has to plead from what date his possession became adverse, and he must disclose the necessary ingredients in his pleadings. Since the written statement filed by respondents is totally silent. There is no foundation on the aspect of adverse possession pleaded by the defendants in their written statement, therefore, the plea having been taken for the first time in arguments cannot be termed as a legal plea which can be raised at any stage. As earlier mentioned that plea of adverse possession is a mixed question of law and facts and therefore, it cannot be held to be a pure question of law.

[25]. Plea of adverse possession proceeds title in favour of opposite party. Since the plaintiff claims himself to be in continuous possession of the suit land and had constructed residential house since 1987 and had made addition in khasra number 26//19/1 and partly in *khasra* number 26//19/2 and possession of the plaintiff was admitted by the respondent/

defendants, therefore, plaintiff has become owner on the basis of his possession being open, hostile, continuous, to the very knowledge of the respondents and he had become owner by adverse possession. Since suit on the basis of adverse possession does not lie, therefore, plaintiff cannot be held to be owner on the basis of adverse possession.

[26]. So far as sale deed dated 19.08.1980 in favour of plaintiff/appellant by Surakshat Singh is concerned, the same is subsequent to the sale deed dated 15.07.1974 Ex.D1 which was executed by the same vendor along with others in favour of defendant No.10 Ranjit Singh. Since the sale deed Ex.D-1 is prior in point of time, therefore, the same will prevail over Ex.P-1. Therefore, no such declaration can be given in favour of the plaintiff. Secondly, the document Ex.P-1 relates to *khasra* number 26//18 and 26//19 whereas pleadings of the plaintiff are in the context of *khasra* no.26//19/1 and 26//19/2. Further prayer for joint possession in respect of *khasra* no.26//17/18 and 19/2 made the case of the plaintiff entirely different at all three stages.

[27]. Contradictory pleadings cannot be made the basis for a decree, *jamabandi* Ex.P-9 and *khasra girdawari* Ex.P-10 reflected the possession of plaintiff over the suit property as *gair marusi*. The commencement of these entries is not forthcoming.

Since the plea of adverse possession cannot be accepted, therefore, defective title of the vendor would entail in rejection of the claim of the plaintiff. No evidence of ownership has come forth on record in respect of 2 *Kanals* 5 *Marlas* of land, therefore, no such claim can be entertained without there being any cogent evidence on record. The plea has been found to be barred by limitation. In respect of sale deed dated 19.08.1980 the suit ultimately came to be filed in the year 2000 which in considered opinion of this Court cannot be enforced.

[28]. In view of evidence on record, this Court does not subscribe any interference in concurrent finding of fact recorded by both the Courts below, therefore, question Nos.(ii), (iii) and (iv) have to be answered in negative. The suit is liable to be dismissed. No title can be passed to the plaintiff on the basis of sale deed of the year 1980 in the light of previous sale deed of the year 1974 and the suit has been rightly dismissed by the Courts below.

[29]. Having deliberated upon the issues involved, this Court finds that no indulgence can be granted in Regular Second Appeal, resultantly this appeal is found to be totally bereft of merits and the same is dismissed in *limine*.

November 03, 2015

Atik

(RAJ MOHAN SINGH)
JUDGE