

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

RSA No.2707 of 2013.

Date of Decision: 11.12.2015.

Sohan Singh

....Appellant.

VERSUS

Tarsem Singh

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Ms. Sarika Gupta, Advocate for the appellant.

SNEH PRASHAR, J.

1. This was Regular Second Appeal filed by appellant-plaintiff Sohan Singh (hereinafter referred to as the “appellant”) impugning the judgment and decree dated 18.07.2012 passed in Civil Suit No.914 of 2011 by learned Additional Civil Judge (Senior Division), Shaheed Bhagat Singh Nagar, dismissing the suit for declaration with consequential relief of permanent injunction filed by him against respondent-defendant Tarsem Singh (hereinafter referred to as the “respondent”), which was upheld by the first appellate Court vide judgment and decree dated 14.12.2012.

2. The relevant facts are as under:-

In the suit for declaration filed by the appellant-plaintiff, he claimed that he has become owner by way of adverse possession of land and house (detail of which was given in the head note of the plaint), situated at village Ladhana Jhikka (hereinafter referred to as the “suit properties”). As a consequential relief, he prayed for a permanent injunctive order restraining the respondent from alienating the suit property and from dispossessing him forcibly and illegally. He pleaded that earlier respondent was the owner of the suit property. He had been residing abroad since 1962 and had asked him (appellant) to raise construction on Khasra No.344 and to purchase some agricultural land for him. He was assured of payment of construction charges and sale consideration amount alongwith other expenses within one year from the date of purchase of the agricultural land. Accordingly, he raised construction on Khasra No.344 and got an electric connection installed in his name. The construction of the house took considerable time and was completed in parts and the entire expenses were borne by him (appellant). He also purchased land measuring 27 Kanals 15½ Marlas and got the sale deed registered in the name of the respondent on 09.06.1969 by spending Rs.13,000/- from his pocket.

The appellant pleaded that he demanded the sale consideration amount and other expenses incurred by him from the respondent but instead of paying the same he sent the other original sale deed dated 17.06.1964 to him in the month of May, 1970 and assured to take back both the sale deeds after making payment of the entire amount. He also did not pay the

construction charges despite demand. After one year as agreed between the parties, he openly declared that he will not hand over the vacant possession of the suit property to the respondent and will treat the same as the property owned by him. Accordingly, he wrote a letter to the respondent on 10.06.1970 declaring his possession hostile to the rights of the respondents. Since then he had been in continuous physical possession of the suit properties without payment of any amount to the respondent, who has never raised an interruption in his possession. More than 12 years have passed and his possession has ripened into ownership rights.

The appellant also averred that he had made the agricultural land cultivable by spending huge money since 09.06.1969 and the entries in the revenue record showing possession of the respondent are incorrect. The entries in the Khasra Girdawari from the year 2003 have been changed in his name on an application given by him and after thorough investigation at the spot by A.C. IInd Grade, Banga. Since the respondent still failed to admit his claim, he was constrained to file the present suit.

3. Despite service of notice, the respondent did not appear to contest the suit and was proceeded against exparte and the appellant led his exparte evidence. Subsequently, the respondent appeared and got the exparte proceedings set aside against him. In the written statement filed by him he denied that the appellant is in possession of the suit properties i.e. the agricultural land and the house. He submitted that he had been coming to India at regular intervals and in his absence his wife Surjit Kaur and father Gurbachan Singh had been residing in the house in question. The

agricultural land had also been under his self cultivation. The house was constructed and the land was also purchased with the money sent by him and accordingly the sale deeds were rightly executed in his name.

The respondent further submitted that the appellant was a minor and a student when the land was purchased and was dependant on his (appellant's) earnings. It is after his father died in the month of May, 2005 that the appellant illegally and forcibly broke open the lock of the house and criminally trespassed into the same. He committed theft of the articles lying in the house valuing Rs.1,50,000/-. A separate suit for possession has already been filed by him in respect of the house. Alleging that the appellant has no concern with the agricultural land and the allegation of adverse possession is illegal and false, the respondent prayed for dismissal of the suit.

4. On the rival contentions of the parties, following issues were framed:-

- (1) Whether the plaintiff is in peaceful, open hostile, continuous possession of the suit property since 10.6.2007? OPP.
- (2) Whether the plaintiff has become owner by way of adverse possession of the suit property? OPP.
- (3) Whether plaintiff is entitled to declaration as prayed for? OPP.
- (4) Whether plaintiff is estopped to file the present suit by his own act and conduct? OPD.
- (5) Whether the suit is not maintainable in the present form? OPD.
- (6) Relief.

5. Both the parties adduced ocular as well as documentary evidence to substantiate their rival pleadings.

6. Considering the submissions made on behalf of the parties and the evidence produced by them, learned trial Court dismissed the suit of the appellant finding that the possession of the appellant had not been open, continuous and adverse to the rights of the true owner for over the statutory period.

7. Appellant preferred an appeal against the judgment and decree dated 18.07.2012 passed by learned trial Court which was dismissed by learned Additional District Judge, Shaheed Bhagat Singh Nagar vide judgment and decree dated 14.12.2012.

8. Feeling aggrieved, the appellant has filed the instant Regular Second Appeal.

9. The submissions made by Ms. Sarika Gupta, learned counsel representing the appellant have been considered.

10. As observed above, the appellant filed a suit claiming declaration that he had become owner of the suit properties by way of adverse possession. He admitted that originally the respondent was owner of Khasra No.344 on which the house stands constructed and it was on the asking of the respondent that he had raised the construction. As regards the agricultural land, he alleged that he purchased the same for the respondent on the assurance that the sale consideration amount will be paid by him within one year from the date of execution of the sale deed. After raising the construction and purchase of the agricultural land, he demanded the costs of construction and the sale consideration amount from the respondent in the

month of May, 1970 but when he failed to make the payment he openly declared that he will not hand over the possession of the suit properties to him and hence because of his open, continuous and hostile possession to the knowledge of the respondent, he had become owner of the suit properties by way of adverse possession.

11. The vital question which emerges for determination is whether a person can file a suit seeking declaration that he had become owner of an immovable property by way of adverse possession. Article 64 of the Limitation Act postulates that a suit for possession of immovable property by a plaintiff, who while in possession of the property had been dispossessed from such possession, when suit is based on previous possession and not based on title, can be filed within 12 years from the date of dispossession. Similarly, Article 65 of the Limitation Act provides that 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.

From the above provisions, it is apparent that only to contest a suit for possession, filed by a person on the basis of his title, a plea of adverse possession can be raised 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. From that it follows that a plea of adverse possession is a defence available to a defendant and cannot be used as a sword by filing a suit. When a plea of

adverse possession is only available to a defendant, a suit seeking declaration on that basis cannot be filed by a person. In this context, reference be made to **Bhim Singh and others vs. Zile Singh and others, 2006-3 Vol.144 P.L.R. 159.**

In the above premise, learned trial Court rightly held that the suit of the appellant seeking declaration that he had become owner of the suit properties by way of adverse possession is not maintainable.

12. The matter does not end here. Admittedly, according to the appellant himself, agricultural land was purchased in the year 1969 and the sale deed of the said property is in the name of the respondent. The appellant alleged that he had paid the sale consideration amount which was returnable to him by the respondent within one year from the date of purchase of the agricultural land by the respondent but he failed to do so. In other words, the appellant pleaded that the respondent is a *Benami* owner and he (appellant) having paid the sale consideration amount was the real owner. After coming into force of the Benami Transaction (Prohibition) Act, 1988 the plea of *Benamidar* stands abolished.

Moreso, findings of learned first appellate Court are that the appellant is not in fiduciary relations with the respondent. He was born in the year 1948 and he joined service in 1979. The house was constructed in the year 1964 when he was hardly 16 years old. Therefore, it cannot be believed that he had collected so much money that he could raise construction for his brother. His story that he was doing labour and was running business of sand and brick, was not believable. He could produce

no substantive evidence to prove that the money spent on the construction was spent by him from his own pocket or that so much money was available with him. The agricultural land was purchased in the year 1969. Though by then the appellant had become major but it remained unexplained on file how and from where the appellant arranged the sale consideration amount.

13. Thus, seen from every angle, the suit of the appellant was not maintainable and it was rightly dismissed by learned trial Court as well as learned first appellate Court. There being no substantial question for decision by this Court and the appeal having no merit is dismissed.

(SNEH PRASHAR)
JUDGE

11.12.2015
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