

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

Regular Second Appeal No.3007 of 2013 (O&M)

Date of Decision: January 12, 2015.

Harbans Singh

.....APPELLANT(s).

VERSUS

Palwinder Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Alok Mittal, Advocate
for the appellant (s).

Mr. Bishwajeet Bedi, Advocate
for the caveator-respondent.

SURINDER GUPTA, J.

Appellant-plaintiff sought possession of land comprised in khewat No.4 khatauni No.29, khasra No.236(0Bigha-2Biswas) situated at village Palhia Kalan, Tehsil Nabha, District Patiala as per jamabandi for the year 2004-05 with the plea that the respondent-defendant has taken illegal and forcible possession of the aforesaid land in October, 2007. The appellant got his land bearing khasra No.236 measuring 8 Bigha 14 Biswas demarcated from Halqa Kanungo on 29.12.2007 and found that his land measuring 2 Biswas out of aforesaid khasra number was in illegal possession of respondent-defendant. Despite request respondent-defendant failed to deliver possession of the same to the plaintiff compelling him to file the instant suit.

Respondent-defendant denied that he ever came in possession of

land of plaintiff bearing khasra No.236. He also denied the demarcation allegedly got conducted by the appellant-plaintiff from Halqa Kanungo on 29.12.2007. An additional plea was taken that earlier Jang Singh was in possession of the 'suit land' who was allotted the same during consolidation about 50 years back. He transferred the possession of the same to the respondent-defendant with other land represented by khasra No.447(0B-2B) and the possession of the respondent-defendant was peaceful, uninterrupted, hostile and as a matter of right for the last twelve years. The respondent-defendant took a plea in alternative that he had become owner of the suit property by adverse possession.

Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the plaintiff is entitled to possession of the suit land ?OPP
- (2) Whether the defendant is in adverse possession of the suit land, if so its effect ?OPD
- (3) Whether the suit is not maintainable in the present form ? OPD
- (4) Whether the plaintiff is estopped from filing the suit by his own act and conduct ?OPD
- (5) Whether the suit is time barred ?OPD
- (6) Whether the plaintiff has got no cause of action and locus standi to file the present suit ?OPD
- (7) Relief.

On issue No.1, learned Additional Civil Judge (Senior Division),

Nabha returned the finding against the appellant-plaintiff as follows:-

“Plaintiff has not been able to prove firstly, possession of plaintiff over the suit land. Further demarcation report placed on record by plaintiff is highly doubtful as discussed above. As such, the plaintiff has failed to prove that he is

entitled for possession of 0B-2B of land which was allegedly encroached upon by the defendant. Accordingly, question of recovery of possession thereof does not arise.”

In the absence of any evidence, the plea of adverse possession taken by the respondent-defendant was held as not proved and all the other issues were decided against the respondent-defendant. Regarding the report of Halqa Kanungo, who conducted the demarcation on 29.12.2007, it was observed as follows:-

“PW2 Sat Pal Halqa Kanugo during his cross examination has admitted that he has conducted the demarcation on 29.12.2007. He further admitted that demarcation is required to be conducted from pucca Burji/Thadda. They have conducted demarcation from one Pucca Thadda but they were not able to find out other pucca Thaddas. Further Naksha Tafabat was prepared at the spot and that it was got prepared from Patwari but same bears his signatures. He further deposed that he conducted demarcation from side of Burji. Demarcation report (Ex.P2) as placed on record is dated 29.12.2007 and it contains signatures of plaintiff Harbans Singh. However, it does not contain signatures of defendants, but it contains remarks “refusal”. Further, Sat Pal Halqa Kanugo also admitted that he does not know name of Halqa Patwari who was present at the time of demarcation conducted by him. In this way, the demarcation conducted by DW2 has become doubtful on account of assertions of Halqa Kanugo in cross examination that side plan was prepared by Halqa Patwari. It was mandatory for Halqa Kanugo to conduct demarcation as per Hon'ble High Court rules and orders and as per instructions of F.C.R. Punjab. Halqa Kanugo must give details in measurements made by him as well as submit a

copy of relevant portion of current settlement, field map of Village showing the fields with dimensions situated between the points mentioned and the boundary in dispute. However, PW2 has failed on this aspect. Report of Halqa Kanugo failed to point out the cause and causes of increase or decrease in the measurement of land/disputed boundaries. Reliance is placed on the authority reported as ***Mahabir and another Vs. Surta and others 2006(2) RCR (Civil) (P&H) 153***, wherein Hon'ble High Court observed that when local commission does not fix pucca points in accordance with the norms prescribed in the High Court Rules and Orders and defendant is not associated at the time of demarcation, such report is not reliable in the eyes of law.”

Not satisfied, appellant-plaintiff filed appeal which was dismissed by Additional District Judge, Patiala vide judgment dated 10.01.2013.

I have heard learned counsel for the parties and have perused the paper book with their assistance.

Learned counsel for the appellant-plaintiff has argued that respondent-defendant had taken an alternative plea of adverse possession over the suit land which amounts to admitting the ownership of the appellant-plaintiff. In view of this plea, the appellant-plaintiff was not required to prove his title over the suit property. Both the Courts below have committed grave error of law while holding that appellant-plaintiff has not been able to prove that respondent-defendant has encroached upon any portion of land bearing khasra No.236.

Learned counsel for the respondent-defendant has argued that

the onus was on the appellant-plaintiff to prove that respondent-defendant had encroached upon any portion of his land bearing khasra No.236. No worthwhile evidence to prove this fact was produced. Both the Courts below have rightly ignored the report of demarcation which was not in accordance with rules. Appellant-plaintiff cannot take any benefit of the alternate plea raised by the respondent-defendant that he had become owner of the suit land by adverse possession. In fact, the plea raised by the respondent-defendant was that he is in possession of the land bearing khasra No.447 (0B-2B) situated in village Palhia Kalan and his possession over this land is continuous, peaceful, uninterrupted and as a matter of right for the last more than twelve years. It has nowhere been pleaded by respondent-defendant that he has become owner of land bearing khasra No.236 or any portion of it by way of adverse possession. In the absence of any evidence in support of his plea, the appellant-plaintiff cannot assail the findings of both the Courts below.

On perusal of paper-book and the judgments of both the Courts below, I find substance in the submission made by learned counsel for the respondent-defendant. The appellant-plaintiff had not come up with a specific plea that respondent-defendant had encroached upon his land measuring 2 Biswas, which is part of khasra No.236. It is not disputed that the appellant-plaintiff failed to prove his dispossession by defendant from this land by leading cogent and convincing evidence. To support his contention that the ownership of appellant over land bearing khasra No.236 (0B-2B) is deemed to be admitted by respondent in view of his alternate plea

to the observations made by Coordinate Bench of this Court in case ***Jagat Singh Vs. Sri Kishan Dass 2008(2) R.C.R. (Civil) 106***, where a dispute had arisen regarding the identity of the suit property and it was observed that by raising the plea of adverse possession, the title of plaintiff is deemed to be admitted. Relying upon the above observations, learned counsel for the appellant-plaintiff has argued that in this case also, in view of the plea of adverse possession raised by respondent-defendant, the identity of the suit land and its possession with the respondent-defendant cannot be challenged.

In the above citation referred by learned counsel for the appellant-plaintiff, the plaintiff had succeeded in proving himself to be owner of the suit land and his suit was decreed. There was no dispute regarding the identity of suit property, rather the plea of defendant was that he had purchased the suit land and was in possession of the same. In this case, respondent-defendant nowhere admits his possession over the suit land. His plea as contained in para 3 of the additional pleas in the written statement (copy of plaint and written statement have been supplied by learned counsel for the appellant-plaintiff during the course of arguments) is as follows:-

“3. The plaintiff is neither owner nor in possession of the suit property and thus he has no locus standi to file the present suit. Earlier Jang Singh son of Kishan Singh was in possession of the suit property and he was using the same for Ruri purposes as the same was allotted to him during the consolidation, which took place in the village about 50 years ago. Later on Jang Singh transferred the possession to the defendant along with other land represented by Khasra No.447(0-2) situated at village Palia Kalan, Teh. Nabha. The possession of the defendant is peaceful uninterrupted and hostile and as a matter of right for the last more than 12 years and earlier Jang Singh was in

possession of the same in the same capacity to the knowledge of whole world including the plaintiff. So, alternatively the defendant has become owner of the suit land by way of adverse possession.”

On perusal of above plea of respondent-defendant, it is clear that while referring to suit land, his reference is towards land bearing khasra No.447(0B-2B) and not to khasra No.236(0B-2B).

In view of the facts and circumstances discussed above, the Appellate Court below has committed no error of law and fact while discarding the plea of appellant that the alternate plea of adverse possession raised by respondent-defendant be taken as admission of title of the appellant-plaintiff over the suit property. A party may raise any number of alternate pleas to resist the claim of the other party but the plaintiff, coming with a specific plea, has to prove his case on the basis of evidence led by him. The onus was heavily on appellant to prove that suit land bearing khasra No.236(0B-2B) is in possession of respondent-defendant. He could succeed in seeking possession of above land on the basis of his title only on proof of the fact so pleaded. On his failure to prove by any cogent and convincing evidence that respondent-defendant is in possession of suit land, he cannot take benefit of alternate plea raised by the respondent-defendant, which in fact relates to land bearing khasra No.447(0B-2B) and not to suit land.

As a sequel of my above discussion, this appeal has no merits.
Dismissed.

January 12, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE