

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1647 of 2015 (O&M)
Date of decision 01.05. 2015.

Bimla Devi

..... Appellant.

versus

Kunti Devi since deceased through LRs

..... Respondent.

CORAM :- HON'BLE MR.JUSTICE K.C.PURI.

1. Whether Reporters of Local Newspapers 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?

Present : Mr. Adarsh Jain, Advocate for the appellant.

K.C.PURI, J.

C.M. No.4583-C of 2005.

For the reasons mentioned in the application, delay of 88 days in re-filing the appeal stands condoned. CM stands disposed of accordingly.

MAIN APPEAL

Defendant-appellant-Bimla Devi has directed the present appeal against the judgment and decree dated 02.09.2014 passed by Shri Darshan Singh, the then learned District Judge, Faridabad vide which the appeal against the judgment and decree dated 10.12.2013 passed by Shri Amrit Singh Chalia, learned Additional Civil Judge (Senior Division), Faridabad, decreeing the suit of the plaintiffs, was dismissed.

5. Briefly stated the case of the plaintiffs is that in the year 1972 plaintiff No.2 let out one shop to the husband of defendant No.1 Rattan Lal. He was chronic defaulter in the payment of rent w.e.f. 1.10.1988 to 31.3.1991, plaintiff No.2 filed an ejectment petition which was decided on 10.12.1999 in which Rattan Lal was directed to hand over the vacant possession of the suit property to plaintiff No.2 within a period of two days. Rattan Lal preferred an appeal against the said judgment which was allowed on technical grounds. After decision of the said appeal, Rattan Lal filed a civil suit titled as Rattan Lal vs. Braham Dutt and others impleading the present plaintiffs as defendant Nos.2 and 4 which was dismissed on 26.03.2008 holding that suit property was constructed by plaintiffs and the said suit property was part and parcel of the house of plaintiff. Defendant Rattan Lal filed an appeal against that judgment, which was upheld by the learned Appellate Court vide judgment dated 27.7.2009 affirming the finding of the learned trial Court and modified the judgment restraining the defendant/plaintiffs not to evict the defendant except in accordance with law. Thereafter, plaintiff served a legal notice dated 8.3.2010 to the defendant to vacate the shop and hand over its possession alongwith mesne profit for wrongful occupation of the suit property but neither any reply was received nor defendant vacated the possession of the suit property to plaintiffs.

6. It is further averred that a person can be in possession right in various ways i.e., licensee/tenant/permissible possession holder/adverse possession holder but the onus is always upon the tenant to prove in what

capacity but in the present case, claim of defendant being in adverse possession was declined by lower as well as Appellate Court. Moreover, when the relationship of the landlord and tenant is not proved, the landlord can seek the possession on the basis of title, hence the suit.

7. On notice, defendant appeared and resisted the claim of the plaintiff and took preliminary objections regarding maintainability, cause of action and that suit is bad for court fee etc.

On merits, defendant denied that plaintiff No.1 is not owner and plaintiff No.2 is not the lessee of the shop in question, rather answering defendant became owner of the shop by way of adverse possession for which he filed a suit in civil court, which was dismissed vide judgment dated 26.3.2008. An appeal was filed by him against the said judgment which was allowed partly to the effect that answering defendant is not to be dispossessed except in due course of law. The answering defendant filed an appeal before the Hon'ble High Court, which is still pending and the rights of the defendants are yet to be decided. The shop in question was constructed by Rattan Lal himself. He occupied the site in 1958 and put a chhappar over it. Defendant raised pucca construction over it in the year 1963 and started workshop in the year 1973-74 after obtaining electric connection in his name bearing No.DCS-261 and at present a bakery is being run in it and as such his possession over the shop in question since 1958 was uninterrupted and continuous and he became absolute owner in possession of the same in the year 1979 after 12 years. Since the defendant is lawful owner of the suit property by way of adverse possession, the suit

of the plaintiffs is liable to be dismissed with heavy costs.

From the pleadings of the parties, following issues were framed by the trial Court :-

1. Whether the plaintiff is entitled to decree of recovery of possession in her favour and against the defendant in respect of the suit property ?OPP
2. Whether the suit is not maintainable in the present form ? OPD
3. Whether the plaintiffs have concealed the material facts from the court ? OPD
4. Whether the plaintiffs have no cause of action to file the present suit ? OPD
5. Whether the suit is not properly valued for the purpose of court fee ? OPD
6. Whether the plaintiffs are estopped from filing the suit by their own act and conduct ? OPD
7. Whether the plaintiffs are entitled to a decree of recovery of possession, as prayed for ?OPD
8. Relief.

8. On the aforesaid issues, the parties have led their respective evidence. The trial Court after appraisal of the evidence, decreed the suit of the plaintiff vide judgment and decree dated 10.12.2013.

9. Feeling dissatisfied with the judgment and decree dated 10.12.2013, defendant preferred First appeal before District Judge, Faridabad. The learned District Judge, Faridabad after re-appraisal of the evidence, dismissed the appeal of the defendant vide judgment and decree dated 2.9.2014.

10. Defendant-appellant feeling aggrieved against the judgment

and decree dated 10.12.2013 and judgment and decree dated 2.9.2014, preferred regular second appeal before this Court.

11. The appellant in paragraph No.23 of the grounds of appeal, has mentioned that following substantial questions of law have arisen in the present regular second appeal :-

- (i) Whether a defendant is not entitled to set up a plea of adverse possession and entitled to adjudication and decision of the said issue ?
- (ii) Whether declaration of issue of adverse possession in a previous suit not instituted by the owner can constitute res-judicata or exclude period of litigation for calculating limitation ?
- (iii) Whether the judgment which has not become final and is still subject matter of appeal, can be considered to be final and on the basis thereof the present suit raising plea of adverse possession could have been refused to be adjudicated ?
- (iv) Whether the learned courts have not misconstrued Article 65 of the Limitation Act and period available to discount adverse possession would not commence from the date of filing of suit of possession ?
- (v) Whether non-reading and misreading of evidence by the courts below is not a perverse approach and a substantial question of law ?
- (vi) Whether in the facts and circumstances of the case, the judgment and decree passed by the learned courts below being illegal, unsustainable in law are liable to be set aside and reversed ?

12. I have heard learned counsel for the appellant and have gone through the records of the case.

13. Learned counsel for the appellant has submitted that First Appellate Court has wrongly decreed the suit of the plaintiff. The finding of the Lower Appellate Court that Karnal Court has jurisdiction is wrong and

is liable to be set aside.

14. I have carefully considered the said submission but do not find any force in that submission.

15. Learned counsel for the appellant has submitted that defendant is in possession of the suit property since 1958. Her possession is in the hostile manner. Their predecessors-in-interest have raised the construction and are occupying the suit property without any interruption. It is further submitted that appellant filed a suit for declaration and that suit has been dismissed by both the Courts below and appeal is pending. The right of possession has been protected in that suit. So, during the pendency of the appeal, the appellant cannot be dispossessed. The judgments and decrees of both the Courts below are against the facts and law. Both the courts below have misinterpreted the evidence on the file. The suit of the plaintiff is hopelessly time barred. The plea of adverse possession has been wrongly declined by the trial Court.

19. I have carefully considered the said submission but do not find any force in that submission.

20. The stand of appellant is based upon the plea of adverse possession. Both the Courts below have returned a definite finding that defendant/appellant has failed to prove her adverse possession. The ownership of the plaintiff stands proved by proving the sale deeds in respect of suit property. The appellant previously filed suit for declaration claiming ownership and that suit has been dismissed by the trial Court and the appeal preferred by the present appellant was stated to have been dismissed. The

appellant wanted to take benefit of the pendency of the appeal. However, appellant cannot take benefit of that plea. It is settled law that plea of adverse possession cannot be taken by the appellant as she has virtually admitted the ownership of the plaintiff. The appellant has failed to prove her continuous peaceful possession for more than 12 years and as such the findings of fact recorded by both the Courts below that she had failed to prove her adverse possession cannot be challenged in the regular second appeal. So, in these circumstances, I have no hesitation in holding that no question of law much-less the substantial question of law has arisen in the present appeal.

21. Consequently the appeal preferred by the defendant/appellant is without any merit and the same stands dismissed.

22. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

May 01, 2015
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