

In the High Court of Punjab and Haryana at Chandigarh
.....

(1) R.S.A. No.932 of 2013 (O&M)
.....

Date of decision:8.4.2015

Rakesh and others
.....Appellants
v.

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

(2) R.S.A. No.933 of 2013 (O&M)
.....

Ishwar Singh and others
.....Appellants
v.

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

(3) R.S.A. No.1367 of 2013 (O&M)
.....

Shri Chand
.....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.

.....

Inderjit Singh, J.

This order will dispose of the above mentioned three regular second appeals filed by Rakesh, Dalip, Chiria Devi, Shri Chand, Ishwar Singh, Shishpal, Paro Devi and Madan appellants-defendants against Dharampal, Sedha Ram, Gaja Nand, Meer Singh and Dhanpat respondents-plaintiffs as similar point arises for determination in these appeals. All these appeals are being taken up together for decision as in all the appeals the same point is involved and all the cases are filed by the same plaintiffs almost taking the same pleas in all these cases. Similarly, though the defendants are different in all these three cases, but they have taken almost similar pleas and have led almost similar evidence and the questions to be decided in the present appeals are the same.

Both the learned counsel have stated that these appeal may be decided together as the same points are involved regarding the evidence and the evidence is also of similar nature.

The facts are taken from R.S.A. No.932 of 2013, Rakesh and others v. Dharampal and others. The brief facts of the cases are that Dharampal etc.-plaintiffs filed suits against Rakesh, Dalip, Chiria Devi, Shri Chand, Ishwar Singh, Shishpal, Paro Devi and Madan-defendants for possession and permanent injunction. It is stated in the plaint that the plaintiffs are owners of the plot in dispute, in equal share. The parties to the suit belong to the same and one family. As the defendants had less land for

tying animals, hence the defendants demanded the plot in dispute from the plaintiffs for tying animals, with the promise to hand over the possession of the same, on demand made by the plaintiffs. As the parties belonging to the same and one family, the plaintiffs gave the plot in dispute to defendants for use. Therefore, the possession of the defendants over the plot is permissible one. The plaintiffs have a need to construct house for their children as well as 'Nohra' for animals and for this purpose they collected the building materials like bricks, stones etc. on the spot. The plaintiffs asked the defendants to remove the articles from the plot in dispute, but the defendants refused to vacate the possession. The defendants have residential houses in the fields and also within the 'Laldora'.

On the other hand, the case of the defendants in the written statement is that the plot in dispute, prior to consolidation, which took place in the year 1962-63, was under the possession of the father of the defendants, namely, Rama Nand, who constructed a residential house in the year 1982. During the life time of the father of the defendants, he himself remained owner in possession of the plot in dispute. The father of the defendants died in the year 1994 and after his death the defendants became owners in possession of the same and now the possession of the defendants over the plot in dispute is hostile to the knowledge of everyone including the plaintiffs. Thus, the defendants by way of adverse possession have become owners and the plaintiffs have no right or concern with the ownership and possession of the defendants over the plot in dispute. The entries in the revenue record showing the plaintiffs as owners of the plot in

dispute are wrong against law and facts, null and void, not binding on the rights of the defendants.

Both the parties produced the evidence and the learned Additional Civil Judge (Senior Division), Loharu vide judgments and decrees dated 10.2.2011 dismissed the suits of the plaintiffs and the appeals were filed by the plaintiffs against the judgments and decrees of the learned Additional Civil Judge (Senior Division) and in the appeals the judgments of the learned Additional Civil Judge (Senior Division) were set aside and the suits of the plaintiffs were decreed.

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

Notice of motion was issued to the respondents, who appeared through counsel and contested the appeals.

I have heard learned counsel for the parties and have gone through the record. In the present appeals the substantial question of law arises, which is as follows:-

“Whether the first appellate Court/Additional District Judge has misread the evidence?

I have gone through the record and have also heard learned counsel for the parties.

From the record, I find that the case of the plaintiffs Dharampal etc. is that the possession of the defendants over the suit land is permissible one. Whereas the case of the defendants is that their possession over the

suit land is hostile and more than 50-60 years ago and they are in adverse possession.

A perusal of the evidence on record shows that the plaintiffs have not led any cogent evidence to show that the defendants' possession is of licensee and permissible one. The case of the plaintiffs is as per the plaint, the plot was given for the purpose of tying the animals etc. and the defendants were already having houses in the fields as well as within 'Laldora'. As per the case of the defendants, they have made constructions over the plots, but there is nothing in the plaints that the plaintiffs have raised objection for raising the construction. Again the plaintiffs' case, as argued, is that the permissible possession was given 5-7 years before the filing of the suit. Whereas the defendants have produced the revenue record i.e. the Jamabandis of the year 1963-64 and of later period to show their possession over the suit property. The plaintiffs have placed on record latest Jamabandis of 2005-2006 and 2009-2010, which are Ex.P.1 and P.2. In these Jamabandis, entry in column No.9 is shown as "Bila Lagaan Bawajah Kabja Dehinda". The version of the plaintiffs that they have given the property as licensee to the defendants some years back is not supported and corroborated by any oral as well as documentary evidence.

On the other hand, the version of the defendants that they are in possession before consolidation of the property in question is supported by the oral as well as documentary evidence i.e. revenue record. The defendants are not paying any rent to the plaintiffs, who have been shown as owners in the revenue record. The plaintiffs have failed to prove that the

possession was delivered by them to the defendants as licensees. There is no document on record nor any evidence to prove the same. The defendants have been in possession over the suit property for the last more than 50 years and they are not paying any rent and there is nothing on the record to show that they have entered into possession over the property legally.

Therefore, from the evidence on record, the adverse possession of the defendants has been duly proved. The possession of the defendants is hostile, open and continuous for the last more than 50 years. The findings of the learned Additional Civil Judge (Senior Judge), Loharu, in the judgments and decrees dated 10.2.2011 are correct and as per evidence on record and law. The findings given by the learned Additional District Judge, Bhiwani, in the judgments and decrees dated 10.1.2013 setting aside the well reasoned judgments and decrees of the learned Additional Civil Judge (Senior Division), Loharu, are not as per law and have been passed by misreading the evidence on record. When the possession of the defendants is more than 50 years old i.e. from the time of consolidation, there is no need for the actual date, month and year when they entered into possession.

Therefore, from the above, I find that the findings given by the learned Additional District Judge, Bhiwani, are not as per evidence on record. Therefore, the learned Additional District Judge, Bhiwani, while setting aside the judgments and decrees of the learned Additional Civil Judge (Senior Division), Loharu, has misread the evidence.

Therefore, the judgments and decrees passed by the learned Additional District Judge, Bhiwani, in these cases are set aside being not as

R.S.A. Nos.932 of 2013 (O&M) etc.
[7]

per evidence and law. The judgments and decrees passed by the learned Additional Civil Judge (Senior Division), Loharu, are upheld.

Finding merit in these regular second appeals, the same are allowed accordingly.

April 8, 2015.

(Inderjit Singh)
Judge

hsp