

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

Date of decision-05.10.2015

[1] RSA No. 3028 of 2015 (O&M)

Bhag Singh & others

...Petitioners

Versus

Lachman Singh & others

...Respondents

[2] RSA No. 3041 of 2015 (O&M)

Bhag Singh & others

...Petitioners

Versus

Lachman Singh & others

...Respondents

CORAM:- HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:-Mr. Arihant Jain, Advocate with
Mr. Arun Jindal, Advocate
for the petitioner.

Mr. Sanjiv Gupta, Advocate
for the respondents.

RAJ MOHAN SINGH, J, (Oral)

[1] Plaintiffs have filed this regular second appeal against judgment and decree dated 16.04.2015 passed by Additional District Judge Patiala, vide which appeal was dismissed and judgment and decree dated 24.01.2013 passed by trial Court has been upheld.

[2] Plaintiffs filed suit for declaration and permanent injunction to the effect that they are in cultivating possession of 24 bighas 4 biswas of land situated at village Chirva, Tehsil and District Patiala and have become owners by way of adverse possession.

[3] Further they sought declaration to the fact that sale deed executed by defendants No.4 and 5 in favour of defendants No. 1 to 3 is null and void without consideration and is the result of fraud. The beneficiaries of the sale deeds do not derive any right or title in the suit land and plaintiffs continues to be owners in possession of the suit land. Further the gift deed executed by Ruldu Ram in favour of defendants No.4 and 5 was also claimed to be illegal and consequent mutation No.389 passed on such gift deed was also claimed to be null and void. Permanent injunction was also sought restraining the defendants from creating any charge or incumbrances over the suit land in any manner.

[4] The defendants set up a counter claim to the suit filed by the plaintiffs.

[5] Plaintiffs along with proforma defendants No.6 to 10 are legal heirs of late Sh. Bant Ram. Ruldu Ram died issueless and he executed gift deed of the suit land in favour of defendants No.4 and 5. Mutation of said gift was sanctioned on 30.07.1982. Defendants No. 4 and 5 further sold the land in favour of defendants No. 1 to 3. Both the gift deed and sale deed are under challenge in the present suit.

[6] Trial Court dismissed the suit and decreed counter-claim of the defendants/counter-claimants to the effect that counter-claimants are entitled to possession of the land measuring 24 bighas 4 biswas i.e. the suit land. The judgment and decree of the trial Court was upheld by Lower Appellate Court vide judgment and decree date 16.04.2015.

[7] Apparently, plaintiffs have sought declaration of their title on the basis of adverse possession. Suit of such kind is not maintainable as plea of adverse possession cannot be made as weapon of offence, rather this

plea is available to the party in defence. Apparently, suit itself is not maintainable. Still the plaintiffs sought declaration to claim gift deed in favour of defendants No.4 and 5 and sale deed in favour of defendants No. 1 to 3 are null and void.

[8] Learned counsel for the appellants further contended that even if the suit on the basis of adverse possession is not maintainable but father of the plaintiffs was found to be tenant of Ruldu Ram and their possession is still continuing on the suit land and they can only be ejected in due course of law. The suggested due course of law in the very nature of the land is the remedy available before the revenue authorities.

[9] On the other hand, learned counsel for the respondents has vehemently contended that the plaintiffs were ejected from the suit land by the Revenue Court on 02.09.1981, their appeal was rejected by the Appellate Court on 22.12.1982 and further a revision was also rejected by the Commissioner on 06.01.1986. Thereafter, possession was taken by the plaintiffs but they forcibly re-entered in the land and now while appearing as PW-2, plaintiff has admitted the factum of passing of order dated 06.01.1986 by the Commissioner and admitted his possession to be illegal.

[10] Learned counsel for the respondent further contended that all the incriminating dates and events in the context of ejectment of the plaintiffs by the Revenue Court were pleaded in the written statement and were specifically put to the plaintiff in his cross-examination. Both the parties knew each others case and even, if, original order of ejectment was not on record, the plaintiffs have still admitted that they are in illegal possession as on date.

[11] The pleaded case of the plaintiffs in the plaint is on the basis of title of the land on question of tenancy. However, the Courts below have commented with regard to the fact that the father of the plaintiffs was tenant of Ruldu Ram and they claim that they are in adverse possession. Under the color of possessory title, the plaintiffs are not supposed to prefer their title only by alleging that they are in adverse possession.

[12] Apparently, the claim of plaintiffs was rejected by lawful means up till the order dated 06.01.1986 by the revenue Courts and thereafter, they filed the suit in the year 2007 by not staking their claim on the basis of alleged tenancy. It is only during course of proceedings before the Courts below reference was made that the father of the plaintiff was tenant under Ruldu Ram, thereafter, decision was made on the basis of those very entries. Bant Ram died on 25.07.2005. Plaintiffs were claimed to have succeeded possession of Bant Ram. Plaintiffs along with proforma defendants No.6 to 10 are claimed to have succeeded Bant Ram for possessory title from 1975-76 onwards. The plea of possession under color of title is nothing but the trespass. Moreover, it has come in the statement of PWs that the possession of the plaintiffs is illegal after their ejectment by the Revenue Court. Learned counsel for the plaintiffs assailed the impugned judgments and decrees on the ground that the gift deed is not proved on record with reference to the cogent evidence, nor any witness has proved the factum of gift deed on lawful parameters.

[13] In order to appreciate the stand of the plaintiffs, the case set up by the plaintiffs themselves in the plaint is required to be appreciated. The averments in the plaint are conspicuous sale deed with reference to alleged status of the plaintiffs to that of tenants. It appears that they were fully aware of the fact that they have made re-entry in the land in question

after their lawful ejectment by the Revenue Court. Factum of revisional order by the Commissioner is an admitted fact on record. It connects the earlier order of ejectment passed by the competent Revenue Officers as this order is in continuation of legal remedies, rather earlier order merged into the latest order dated 06.01.1986.

[14] Once the plea of adverse possession has been set up by the plaintiffs, it pre-supposes the ownership of the defendants over the suit land. Once the suit itself is not maintainable, in that eventuality, plaintiffs cannot be allowed to seek over declaration vis-a-vis gift deed and sale deed subsequently. Counter-claim has been rightly allowed by the Courts below as the possession of the plaintiffs is proved to be illegal and that of trespasser on the suit land.

[15] The questions of law as formulated in the appeal do not come to the aid of the appellant inasmuch as that once the suit itself is held to be not maintainable on the basis of adverse possession, plaintiffs cannot be obliged to seek further declaration on the basis of his alleged title that gift deed and sale deed are null and void. The plaintiffs have no locus standi to maintain the suit, therefore question Nos. (a), (b), (c), (d), (e) do not arise being based on the plea of gift deed being null and void. Question No. (f) is in respect of counter-claim for that plea in the plaint has to be seen. Since the plaintiffs themselves have not based their claim on the basis of tenancy the counter-claim cannot be based on foreign plea as it is not the one taken in the plaint. The counter-claim come to the claimant of the plaintiffs in the suit land and therefore, even if there is some reference of some old entries showing father of the plaintiff to be tenant under Ruldu Ram, the same cannot be relied to mean that the defendants can not seek ejectment of the plaintiffs by means of resorting appropriate proceedings

before the Revenue Court. In fact, appropriate ejectment order was passed against the plaintiffs in the year 1981 and that was rightly upheld up to the revisional Court. This fact has been duly brought on record by producing documents and all these pleas were duly put to the plaintiff-witnesses in the cross-examination. Rather stand of the plaintiff-witnesses is that their possession on the suit land is illegal.

[16] At this stage, learned counsel for the appellants refers to **1988 Volume (1) R.R.R 533 Gopal Singh Vs. Jamiatpura Dheru Co-op.Society** to contend that once it is held that relationship between parties is that of landlord & tenant Civil Court can't pass a decree for ejectment with regard to agricultural land. Therefore, as per Section 77 (3) (3) of Punjab Tenancy Act the suit filed for ejectment of tenant is maintainable in Revenue Court. Again learned counsel relied upon **2015 Volume 2 R.C.R (Civil) 198 titled as Shyam Lal Vs. Deepa Dass Chela Ram Chela Garib Dass**, in the aforesaid context and stated that the tenant of agriculture holding does not become a possessory after expiry of tenancy and the case has to be governed, as under the tenancy laws.

[17] 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 continued 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 are 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.”

[18] In the present case, since the ejectment order had already been passed before institution of the suit and the plaintiffs themselves have not staked their claim on the basis of tenancy in the present case, therefore, question No. (g) does not arise and the jurisdiction of the Civil Court cannot be ousted. Question No. (h) has to be answered on the issue of non-maintainability of suit being based on plea of adverse possession. Questions No. (i), (j), (k), (l), (m), (n) are the questions which are based on factual matrix of the case and do not arise for consideration of this Court because the controversy involved in the case has been answered on lawful parameters by the Courts below. No legal issue worth consideration is involved in the present case. The appeal is totally bereft of merits and is accordingly dismissed.

October 05, 2015

vanita

**(RAJ MOHAN SINGH)
JUDGE**

