

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No.1395 of 2014(O&M)
Date of Decision: 14.05.2015

Parbandhak Committee Gurdwara Village Chhaura

..... APPELLANT

VERSUS

Darshan Kaur and another

..... RESPONDENTS

PRESENT: - Mr. Manmeet Singh Rana, Advocate
for the applicant-appellant.

Mr. Kanwaljit Singh, Advocate
for the respondents.

CORAM: **HON'BLE MR. JUSTICE SHEKHER DHAWAN**

- 1) Whether Reporters of the local papers 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?

SHEKHER DHAWAN, J.

The present Regular Second Appeal against
judgment and decree dated 26.08.2013 passed by
Additional Disitric Judge, Jalandhar whereby appeal against
judgment and decree dated 29.01.2011 passed by

Additional Civil Judge, (Sr. Divn.), Phillaur was accepted.

For convenience sake, hereinafter, reference to the parties is being made as per their status in the Civil Suit.

The detailed facts are already recapitulated in the judgments of the courts below and are not required to be reproduced. In brief, the facts relevant for disposal of this second appeal are to the effect that the plaintiffs Darshan Kaur and Kashmir Kaur had filed suit for joint possession of land measuring 59 kanals 12 marlas. As per the plaintiffs, they are joint owners/co-sharers to the extent of 29 kanals 16 marlas being $\frac{1}{2}$ share of the total land measuring 59 kanals 12 marlas as per jamabandi for the years 1998-99 of Village Chhaura Tehsil Phillaur, District Jalandhar. The said land was left with defendants Nos.3 to 8 as care takers in their absence but they encroached upon the same and established two institutions i.e. Gurudwara and School and started misappropriating the proceedings of the remaining property. Defendants No.1 to 8 have no right to continue in possession of the same property and duty bound to restore the suit property to its original condition by way of removal of super structure. The request made to defendants were of no use and, as such, the suit before the trial Court.

Defendants No.1 to 5 and 8 contested the suit taking legal objection regarding maintainability of suit and locus standi of the plaintiffs. As per defendants, Sadhu Singh son of Thakur Singh never sold the suit property to the plaintiffs. Even defendants No.9 to 17 have no right or title in the suit property. The entries in the revenue record are wrong, illegal, null and void and does not confer any title upon Sadhu Singh and Gurbachan Singh. The sale deed allegedly executed by Sadhu Singh is false, forged and fabricated. In fact, the property was lying in the shape of '*Jungle*' and residents of the village by spending huge amount collectively cleared the '*Jungle*' and levelled the land. Prior to 1972-73, the total suit land was affected by river Sutlej and after making some improvements, a Gurrudwara was constructed over a part of suit property by the people of the Village. In 1974, a school building was constructed with joint collection by the people of the Villages and after few years, the Government of Punjab took the School under their control and a Government Primary School was started in the building. Veterinary Hospital was constructed by the villagers in 1997 on part of the suit property and later on State of Punjab established its veterinarian Hospital. There is a '*Shamshan Ghat*' in the part of the suit property. Defendant No.1 installed underground

pipe-lines. The defendants took the plea that the plaintiffs and defendants No.9 to 17 are co-sharers in the suit property. The suit be dismissed.

On these facts, the following issues are framed and settled by the Court of First Instance:

1. Whether plaintiffs are entitled to joint possession of the land measuring 59 kanals 12 marlas? OPP
2. Whether plaintiffs have no locus standi to file the present suit? OPD
3. Whether the suit is within limitation? OPD
4. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
5. Whether the suit is not maintainable in the present form? OPD
6. Relief.

The Court of first instance after appreciating the evidence available on file returned the findings that the plaintiffs have failed to prove their ownership. Mere sale deed does not entitle them to be in possession of the suit property rather on the basis of evidence available on file, the defendants are in possession of the suit property since long and suit of the plaintiffs was dismissed.

The plaintiffs preferred appeal before First Appellate Court, which was accepted and suit of the plaintiffs was decreed to the effect that they are entitled to

joint possession to the extent of ½ share measuring 29 kanals 16 marlas, out of total land of 59 kanals 12 marlas.

Being aggrieved of passing of said judgment and decree by the Court of First Appeal, the defendants are before this Court by way of the present Regular Second Appeal.

At the time of arguments, Mr. Manmeet Singh Rana, learned counsel for the appellant took the plea that the Court of first instance failed to consider the material and evidence available on file because it had come in the statement of PW-1 Lehmbur Singh, who appeared as attorney of Darshan Kaur and Kashmir Kaur and admitted that in the year 1952 Village Chhaura and other villages near the bank of river Satluj were washed away by the river. He also admitted that no writing took place regarding leaving the property with defendants as care taker. The First Appellate Court also failed to consider the fact that the plaintiffs had claimed that they were cultivating the land for the last 20-23 years but they could not produce any record of sale of crop. No tubewell was installed in the property for irrigation purpose. Jamabandis and khasra girdawaris also reflects the possession of the defendants. DW-3 Raj Krishan Jr. Assistant in Block Primary Education Office admitted that Government Primary School was running since 1980 till

30.06.2006 under the Punjab Government and thereafter from 01.07.2006, this School started running under the Panchayti Raj. DW-4 Usha Rani had also produced on record entries regarding sanctioning of grants. DW-5 Jagtar Singh proved the electricity bills Exs.D17 to D38, Exs.41 to 43 and receipts Exs.D39, D40 and Exs.D44, 45.

Learned counsel for the appellant also took the plea that the Court of First Appeal failed to consider the fact that the defendants are entitled for possession on the plea of adverse possession because the possession on the suit land is of the defendants since 1972-73 and the same is uninterrupted. The plaintiffs never remained in possession on the basis of sale deed dated 04.07.1983, which was otherwise a sham transaction.

While arguing on these points, Mr. Kanwaljit Singh Chug, learned counsel for the respondents took the plea that sale deed dated 04.07.2003 has been duly proved on the file as per testimonies of PW-2 Pawan Kumar and PW-7 Gurbax Rai Sood. Signatures of Ajit Singh were identified by PW-4 Darbara Singh being Numberdar/Sarpanch and thumb impressions of Daulat Ram were identified by his son Ramesh Lal PW-5. There is no contrary evidence available on the file. The title of the suit land in favour of the plaintiffs has been duly proved on the file on the basis of sale deed

Ex.P-6. More jamabandis P21 to P-26 having evidentiary value as per Section 44 of Punjab Land Revenue Act (for short 'the Act') and established the rights of the applicants as joint owners for 29 kanals 16 marlas.

As regard to plea of adverse possession, learned counsel for the respondents took the plea that plea of adverse possession is a very weak evidence and Hon'ble Supreme Court has observed in case of **State of Haryana Vs. Mukesh Kumar and others**, 2012(1) RCR (Civil) 17 as under:

"42. We inherited this law of adverse possession from the British. The Parliament may consider abolishing the law of adverse possession or at least amending and making substantial changes in law in the larger public interest. The Government instrumentalities -including the police – in the instant case have attempted to possess land adversely. This, in our opinion, a testament to the absurdity of the law and a black mark upon the justice system's legitimacy. The Government should protect the property of a citizen – not steal it. And yet, as the law currently stands, they may do just that. If this law is to be retained, according to the wisdom of the Parliament, then at least the law must require those who adversely possess land to compensate title owners according to the prevalent market rate of the land or property in question. This alternative would

provide some semblance of justice to those who have done nothing other than sitting on their rights for the statutory period, while allowing the adverse possessor to remain on property. While it may be indefensible to require all adverse possessors- some of whom may be poor- to pay market rates for the land they possess, perhaps some lesser amount would be realistic in most of the cases. The Parliament may either fix a set range of rates or to leave it to the judiciary with the option of choosing from within a set range of rates so as to tailor the compensation to the equities of a even case.

43. The Parliament must seriously consider at least to abolish "bad faith" adverse possession, i.e., adverse possession achieved through intentional trespassing. Actually believing it to be their own could receive title through adverse possession sends a wrong signal to the society at large. Such a change would ensure that only those who had established attachments to the land through honest means would be entitled to legal relief."

Reliance was also placed upon judgment from Hon'ble Supreme Court in case of **Chatti Konati Rao and others Vs. Palle Venkata Subba Rao**, 2011 AIR SC (Civil) 265 where Hon'ble Supreme Court observed that following essentials are required to prove the adverse possession:

(i) Mere possession however long does not necessarily mean that it is adverse to the true

owner-it means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner.

- (ii)The possession must be open and hostile enough so that it is known by the parties interest in the property – The plaintiff is bound to prove his title as also possession within 12 years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession.
- (iii)The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and possession was open and undisturbed.
- (iv)Plea of adverse possession is not a pure question of law but a blended one of fact and law.”

Having considered the entire matter, this Court is of the considered view that the plaintiffs have been able to prove the sale deed Ex.P-6 in their favour and on the basis of same, the plaintiffs are joint owners to the extent of 29 kanals 16 marlas of land. Their status as such finds mention in relevant jamabandis (Exs.21 to 26) for the period which have got its evidentiary value as per Section 44 of the Act.

The appellant has sought relief on the basis of its long established possession on the suit property. The plea was also taken that the defendants have become owners of the land by way of adverse possession. Anybody which takes the plea of adverse possession is required to admit at the first instance that opposite party against whom they are seeking adverse possession are the owners of the property and only because of long and established possession, they had become owners of the suit property but that is not the case of the defendants. Even the basic ingredients of adverse possession as laid down by Hon'ble Supreme Court in case of **Chatti Konati Rao and others Vs. Palle Venkata Subba Rao (supra)** have not been pleaded and proved in this case. As regard to claim of the defendants on the basis of adverse possession, Hon'ble Supreme Court has already made it clear in case of **State of Haryana Vs. Mukesh Kumar and others** (supra) that the claim on the basis of adverse possession is such a claim which should not be recognised but for some compelling circumstances. Hon'ble Supreme Court has also observed that even the State cannot take the plea of adverse possession. The First Appellate Court has already discussed in detail the said findings of fact that the plaintiffs are owners of the suit property to the extent of 29 kanals 16 marlas as detailed in

the head note of the plaint on the basis of sale deed Ex.P-6 and as such they are entitled to joint possession.

The findings recorded by the Court of First appeal are based on facts of this case and evidence available on file. As per provisions of law, the present appeal does not involve any substantial question of law except appreciation of evidence and facts which has already been done by the Courts below.

Resultantly, the present appeal is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 14, 2015
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