

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: December 19th, 2015

1. R.S.A.No.1895 of 2014 (O&M)

Bakhtawar & another

...Appellants

Versus

Ram Partap & others

...Respondents

2. R.S.A.No.1920 of 2014 (O&M)

Bakhtawar & another

...Appellants

Versus

Ram Partap & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of 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?

Present: Mr.Ashish Aggarwal, Senior Advocate with
Ms.Neeti Gupta, Advocate,
for the appellants in both the appeals.

Mr.Anil Kshetarpal, Senior Advocate with
Mr.Saurabh Garg, Advocate,
for respondent Nos.1 & 5 to 7 in both the appeals.

AMIT RAWAL, J.

By this order, I intend to dispose of two Regular Second Appeals No.1895 and 1920 of 2014 as the common questions of law and facts involved in both the appeals are the same, which have been filed by the plaintiffs in Civil Suit No.49 of 2003 (hereinafter called "Suit No.1") and defendant/counter-claimants in Civil Suit No.473 of 2006 (hereinafter

referred “Suit No.2”). The facts are being taken from RSA No.1895 of 2014.

It would be apt to give brief preface of the matter.

Bakhtawar, Sultan sons of Manbhar son of Nanga and Sumer son of Harlal son of Nanga filed Suit No.1 claiming declaration that they have become owners of land measuring 23 Bighas 4 Biswas by way of adverse possession as per jamabandi for the year 1934-35, now measuring 103 Kanals 1 Marla, situated in the revenue estate of Village Balroad. It was pleaded that the suit property was owned by Mangtu alias Peela and Shriya sons of Jahar, who was the ancestor of defendants Ram Partap etc. The land was being cultivated by the ancestors of the plaintiffs and proforma defendants, namely, Manbhar and Harlal sons of Nanga in the capacity of owners, i.e., Bavajah Malkiyat Khud and is being cultivated for the last more than 100 years, which is in the knowledge of the defendants and their ancestors and the whole world. The continuous and uninterrupted possession is without payment of rent. The aforementioned suit was contested by defendant Nos. 1, 2, 5, 6 and 8, i.e., Ram Partap, Natthu Ram sons of Mangtu @ Peela son of Jahar, Ramesh, Saroj and Naraini, widow of Attar Singh and the remaining defendants were proceeded *ex-parte*. As per the averments made in the written statement, it has been stated that the ancestors of the plaintiffs and proforma defendants have been in possession of the suit property, but the possession was only permissive one and the claim of adverse possession is not only illegal, but unjustified in the eyes of law, in essence, the suit was not maintainable.

It was further stated that the suit property along with other property was received in inheritance by Jahar after the death of his adoptive father. After the death of Jahar, his sons Mangtu and Shriya became the

owners of the suit property. Shriya died unmarried and, thus, did not have any issue and the entire property vested in Mangtu and, thus, successors-in-interest of Mangtu are the owners of the suit property. Nanga, father of Manbhar and Harlal, was also the resident of Village Kothal, District Mahendergarh, who was nearer to the family of Jahar and had small cultivable land and were not able to earn their livelihood and this fact was known to Jahar, who gave the permissive possession of the suit property, thus, the possession of the plaintiffs was not of the owner, but only permissive one.

During the aforementioned suit, the successors-in-interest of Mangtu filed Suit No.2 seeking possession of the suit property. In the aforementioned suit, Bakhatwar, Sultan sons of Manbhar and Sumer son of Harlal filed a written statement and took up the plea of adverse possession and also filed the counter claim, in essence, the stand taken by the defendants in the previous suit was reiteration of the suit and the pleadings of the suit were the defence. However, in the counter claim, it was specifically urged that they have become owners of the suit property by way of adverse possession as per entries made in the jamabandi for the year 1934-35, Khewat No.32/29 on the basis of the entry “Bavajah Kabja Mukhalphan Malkin” and they have been in continuous, uninterrupted and peaceful possession of the suit property. They have also raised the construction of house on land measuring 2 kanals. It has further been stated that the possession was not permissive in nature.

The trial Court dismissed Suit No.1 and Civil Appeal No.80 of 2012 filed against the judgment and decree was also dismissed, whereas Suit No.2 seeking possession of the suit property has been decreed and Civil

Appeal No.271 of 2012 filed against the same, has been dismissed.

Mr.Ashish Aggarwal, learned Senior counsel assisted by Ms.Neeti Gupta Advocate, appearing on behalf of the appellants-plaintiffs in Suit No.1 and defendants-cum-counter claimants in Suit No.2, in both the appeals, in support of his contentions, raised the following submissions:-

- a) The Courts below have committed illegality and perversity in referring to jamabandi Ex.D3/D3H for the year 1928-29, in essence, have rather misinterpreted and misread the document by treating the word “Haqdari” as authorised, whereas as per the Dictionary of Revenue Terms, word “Haqdari” means legal right. The entry in the aforementioned jamabandi had been written as “Bashra Malkan Bavajah Haqdari”. In support of his contention, he has referred to the Dictionary of Revenue Terms, where the word “Haq” means “legal right”.
- b) The respondent-plaintiffs are cultivating the land on the southern side and the appellants have raised the construction on 2 kanals land bearing Rect.No.33, Killa No.75, which was in their knowledge. The plaintiffs did not raise any objection vis-a-vis raising of the construction nor had sought the possession, which has been continuous, long and uninterrupted;
- c) After the entry of jamabandi for the year 1928-29, both the Courts below have ignored the jamabandies for the years 1934-35 to 2008-09, which show that the entries in the aforementioned jamabandies are of “Bashrah Malkan Bavajah Haqdari” and few of the jamabandies show “Billa Lagan Malik

Khud”;

d) The plaintiffs in Suit No.2 have not pleaded that the possession of the appellants was unauthorised throughout, rather it has been pleaded that it was authorised and filed suit by raising cause of action in the year 2003, thus, the suit as framed was not maintainable, assuming for the sake of arguments, though not admitting for the reason that even if it is presumed that Jahar had given the permissive possession to Nanga and his sons Manbhar and Harlal, the licence, being **Personal Grant**, ceases to exist on the death of Jahar, who died in the year 1934 and even his sons Mangtu and Shriya died 36 and 16 years back and throughout all this time, there was no atonement of licence upon the predecessors-in-interest of Mangtu. The expression “Billa Lagan” means no licence or tenancy and the word “Khud Malik” would mean that the appellants were treating themselves to be owners of the property and this fact throughout was in their knowledge and notice and, thus, the licence was revoked after the death of Jahar;

e) No steps have been taken to seek possession of the property for more than 12 years and, thus, the possession as per Article 65 of the Limitation Act had been converted into ownership as the possession throughout had been long, uninterrupted and continuous to the knowledge of the plaintiffs in Civil Suit No.2, much less *animus possidendi*. The word “Haqdari” means to suppose, to imagine and to conceive as per

the Revenue Dictionary, which reads thus:-

"Tasawwur karna: To suppose, to imagine, to conceive."

The entries in the jamabandi for the year 1938-39 (Ex.P-2), 1942-43 (Ex.P3), 1950-51 (Ex.P4) have been shown as "Bashard Malkan Bashard Lagan Malik Khud" and even in the jamabandies Ex.P5, Ex.P6, Ex.P7, Ex.P8 and Ex.P9 for the year 1946-47, 1954-55, 1959-60, 1968-69 and 1973-74, it has been mentioned as "Bashard Billa Lagan Malkan Khud". The stray entries of jamabandi Ex.D3H, were also misinterpreted and misread by the Courts below as "Bashrah Malkan Bavajah Haqdari" would not convey the title in favour of the plaintiffs in Suit No.2;

f) The parties can always take the mutual destructive pleas. The plaintiffs have failed to aver that the possession of the appellants, after the death of Jahar, had become unauthorised. Vis-a-vis the plea of defendants of *Gair Marusi*, he has cited two judgments, i.e., **Roop Chand Versus Avtar Singh and others, 2011 (4) CivCC 317** and Division Bench judgment of this Court in **Mukhtiar Singh Versus State of Haryana, 2014 (3) R.C.R. (Civil) 668** to contend that word "Gair Marusi" merely refers to an occupant of land and only if it is accompanied by an entry of payment of rent, in the relevant column of the revenue record, would raise inference of a tenancy, thus, mentioning of Gair Marusi would not accord status to the appellants as that of tenants but would as occupants;

g) Vis-a-vis the plea of adverse possession, the learned counsel has cited the following case law:-

i) **Partap Kaur Versus Ismail Mohd.** 2007(3) R.C.R. (Civil) 36, **Bhupinder Nath (Died) through Lrs. and another Versus Surasti (Died) through Lrs.,** 2005(2) R.C.R.(Civil) 335, **Charan Dass and others Versus Rajinder Paul,** AIR 2003 (Punjab) 263 to contend that if the entry was permissive, the possession can always turn hostile at any subsequent point of time as the interested person claiming to be true owner becomes entitled to oust the person in possession openly using the property in a manner like true owner and particularly when the appellants, who are in possession, have raised the construction to the knowledge of the other side, who failed to initiate legal proceedings within the period of 12 years, thus, from that point of time, the possession matures in absolute ownership. The word “Billa Lagan Ba Khial Malkiat” in column No.9 of jamabandi in favour of person in possession, indicates his possession. Since it is an agricultural land, therefore, the date, month and year would not be relevant as the said ingredients would apply to only a property situated in urban area and not with regard to the agricultural land. Vis-a-vis agricultural land, only the revenue entries would reveal possession, as adverse possession or not and since the aforementioned jamabandies have consistently shown the

possession of the appellants to be Malkan Khud, in essence, they have been treating themselves to be owners, which fact was in the knowledge and notice of the plaintiffs in Suit No.2. They failed to take possession within the statutory period of 12 years and as per Article 65, the appellants have become the owners of the property by way of adverse possession;

h) In support of the contention, that the licence is a personal, learned counsel has cited the following case law:-

Shmt.Kaushalya Devi Versus Bhola Nath and another, 1987 P.L.J. 366, which has been rendered by relying upon the judgment of Madras High Court in **Chinnan and others V. Ranjithammal, AIR 1931 Madras.** Vis-a-vis the plea of stray entry, relied upon the Division Bench judgment rendered in **Tansukh and others Versus Financial Commissioner and Principal Secretary, Revenue Department, Government of Haryana and others, 2013(4) R.C.R. (civil) 942** to contend that the presumption of truth attaches to an entry in the jamabandi, but the stray entry having appeared in the revenue record without any reason contradicted earlier and subsequent entries, cannot be looked into and, thus, prays that the following substantial questions of law arise for

determination by this Court:-

- i) Whether the appellants have become owners by way of adverse possession in view of the long, settled, uninterrupted, peaceful possession, much less have been able to prove as animus possidendi?
- ii) Whether the expression “Billa Lagan Malkiat Khud” as per the ratio decidendi culled out in **Bhupinder Nath's case (supra)**, in column No.9 of jamabandi, show the continuous possession of the person as adverse possession?
- iii) Whether the Courts below have misinterpreted and misread the revenue record, particularly Ex.D3H by reading the word “Haq” as authorised instead of legal?

On the other hand, Mr.Anil Kshetarpal, learned Senior Counsel assisted by Mr.Saurabh Garg, Advocate, appearing on behalf of respondent Nos.1 and 5 to 7-defendants in Suit No.1 and plaintiffs in Suit No.2, in support of his contentions, has raised the following submissions:-

- a) The word “Bashra Malkan” as per the Glossary of Judicial and Revenue Terms means: holding any right or privilege, the right of claim, privilege, or property. The same reads thus:-

"Hak-dari, H.&c. Holding any right or privilege, the right of claim, privilege, or property"

Thus, an irresistible conclusion is drawn that the possession of the appellants was permissive in nature and by reading the word “Bashra Malkan Bavaja Haqdari” as a whole, it would mean the possession of the appellants was holding a right from owner or with the consent of the owner and, therefore, the appellants cannot take up the plea of adverse possession;

ii) There is no pleading in the written statement as to the date, month and year of the alleged adverse possession, in essence when and on which date the possession had become adverse. In support of his contention, relied upon Paras 2 and 4 of Suit No.2, wherein it has been specifically pleaded that the possession of the appellants had become unauthorised by filing of the suit in the month of December, 2003;

iii) A licence may have been terminated on the death of Jahar, but the possession of a licensee cannot be converted into adverse possession. On receipt of the instructions from his clients, he submits that the plaintiffs in Suit No.2 do not stake claim with regard to the construction of the house on 2 kanals of land bearing Rect.No.33, Killa No.75;

iv) Licensee cannot claim adverse possession;

v) As per the jamabandies Ex.P7, Ex.P12 and Ex.P13, the entry regarding Batai has also come, which makes the possession of the appellants as permissive and, thus, the permissive possession even by efflux of time shall remain as authorised one. In support of his contention, he has cited unreported judgment of this Court in **Regular Second Appeal**

No.3507 of 2006 (Harpal and others Versus The Delhi Pinjra Pole Society, Delhi), decided on 30.10.2009, wherein the expression “Bashra Malkan” has been defined as possession through owner or with his consent and the expression “Bawaja Nautor” denotes possession for the purpose of making the land cultivable. He has also cited judgment rendered in **Gaya Parshad Dikshit Versus Dr.Nimal Chander and another, (1984) 2 Supreme Court Cases 286**, wherein it has been held that in order to claim physical possession, overt act showing hostile title is essential to establish claim of title by adverse possession, thus, mere termination of licence does not itself confer the title on the erstwhile licensee, thus, the suit for recovery of possession after termination of licence in the absence of “**hostile title**” is not barred under Article 65 of the Limitation Act. He has further cited the judgment rendered in **Hemaji Waghaji Jat Versus Bhikhabhai Khengarbhai Harijan & Others, 2008(4) R.C.R. (Civil) 401** to contend that right to possess property is not only constitutional right, but a human right also, therefore, the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. Thus, the plea of adverse possession is a question of fact and law. The person claiming the adverse possession must show the following ingredients:-

- i) What was the nature of his possession;

- ii) Whether the factum of possession was known to other party;
- iii) How long the possession has continued; and
- iv) His possession was open and undisturbed.

Mr.Kshetarpal has also cited the judgment in **Annakill Versus A.Vedanayagam & Ors., 2007(4) R.C.R. (Civil) 780 (para 22)** to contend that animus possidendi is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus, the period for prescription does not commence. Also cited **Basant Kaur (dead) through her Lrs. and others Versus Bhag Singh and others, 2011(3) R.C.R. (Civil) 543, Indira Versus Arumugam and another, (1998) 1 Supreme Court Cases 614 and Gurudwara Sahib Versus Gram Panchayat Village Sirthala and another, 2013(4) R.C.R. (Civil) 703** in the same lines;

- vi) Vis-a-vis plea of grant of licence of implication, cited judgment rendered by this Court in **Surjit Kaur Versus Balwinder Kaur, AIR 2006 Punjab and Haryana 23.**

In rebuttal, Mr.Ashish Aggarwal submits that where parties are alive to the situation and have led evidence, the Court can always deal with the proposition, in essence, till the plaintiffs-respondents filed the suit in 2006, not only 12 years, but numerous yeas have elapsed and, thus, by efflux of time, the plaintiffs have abandoned their right to claim the possession, in essence, they have abandoned their legal right vis-a-vis ownership. In support of the contention that even if the evidence has not been led on issues and parties actually went on trial should not be made

foundation, for remand or setting aside, cited the following case law:-

- i) **Nagubai Ammal and others Versus B.Sharma Rao and others, 1956 S.C. 593; and**
- ii) **P.Purushottam Reddy and another Versus M/s. Pratap Steels Ltd., 2002(1) PLJ 390 (SC).**

I have heard the learned counsel for the parties and appraised the paper book and am of the view that the appeals deserve to be allowed.

The plaintiffs in Suit No.2 have pleaded that the possession of the appellants became unauthorised in December, 2003 when the suit seeking declaration that they have become owners by way of adverse possession had been filed. Throughout, it has been pleaded that the possession of the appellants had been permissive as Jahar had given the permissive possession of the land in dispute to Mangtu, Manbhar and Harlal. It is a matter of record that Jahar had died in the year 1934. As per ratio decidendi culled out by this Court and as well as the Madras High Court, much less the provisions of Section 52 of the Easement Act permits that the licence is personal between the grantor-licensor and the Grantee-licensee. It is not transferable, much less heritable right. The permissive possession extinguished on the demise of Jahar.

There is another aspect of the matter. Even Mangtu and Shriya had died 36 and 16 years back. No steps have been taken to seek possession of the property during their life time. All the jamabandies, referred to above, i.e., Ex.P1, Ex.P2, Ex.P3, Ex.P4, Ex.P5, Ex.P6, Ex.P7, Ex.P8 and Ex.P9 show that the possession of the appellants was as Malik Khud, i.e., self owners. As per the ratio decidendi culled out in **Bhupinder Nath's case (supra)**, it has been held that the nature of “Billa Lagan Ba Khial Malkiat”

in column No.9 of jamabandi indicates an adverse possession. Billa Lagan Ba Khial Malkiat is an entry representing adverse possession, because it shows that the person in possession was not obliged to pay any rent because he considered himself as owner. Such an entry would amount to adverse possession conferring ownership rights on the appellants. The appellants did not attain status of licensee upon the plaintiffs and, therefore, the possession of the appellants cannot remain permissive.

Looking from all angles, throughout all these years, the plaintiffs in Suit No.2 have not taken any steps to seek the possession of the property and the appellants have been using the property by treating it to be the same and, thus, the entries in the revenue record show them to be as “Khud Malid”.

The plea of Mr.Kshetarpal that the word “Bashra Malkan” would mean through owner or with his consent and, therefore, the possession of the appellants throughout had been permissive does not hold field, much less able to cut an ice for the reason that the licence had come to an end by death of Jahar, therefore, the licence was not in existence when the suit for possession on the basis of the cause of action alleged to have accrued in December, 2003, has been filed. Word “Haqdari” as per the Glossary of Judicial and Revenue Terms means “holding any right or privilege, the right of claim, privilege, or property, co-relates to the definition of “Haqdari” as per the Revenue Dictionary by Chawla Publications, where word “Haq” provides legal right. On collective reading of the expression “Bashra Malkan Bavaja Haqdari”, it would mean “holding a right in the property as true owner” because all the entries in the revenue entries, as mentioned above, show “Malkiat Khud.

The direction of the Hon'ble Supreme Court with regard to expression “Adverse possession legitimising possession into ownership” is under Article 142 of the Constitution of India to the Central Government to amend the Limitation Act. As per the existing law of limitation, the defence of adverse possession can be taken by taking the aid of Article 65 of the Limitation Act. Since the land in dispute is an agricultural land, in my view, the plea of exact date, month and year would be immaterial as there is a categorical pleading in the counter claim that as per the jamabandi for the year 1934-35, the appellants have been in adverse possession. Vis-a-vis the agricultural land, it is the revenue entries which would show the actual, continuous and physical possession.

It is a matter of record that both the parties to the lis are neighbours and the appellants have been cultivating the land to their knowledge, i.e., their possession has been open, hostile inasmuch as that they have raised the construction of the house on 2 kanals of land bearing Khewat No.33, Killa No.75 and the plaintiffs did not raise any eye-brow or much less objected to the same. The stray entry in few jamabandies, would not take away the status of appellants as Malkana Haq. The view of mine is supported by the ratio decidendi culled out in **Tansukh's case** (supra). There is no dispute to the judgments cited and relied upon on behalf of the plaintiffs, but the fact remains that each case has its own fact. No doubt, by setting up the plea of adverse possession, the person has to prove the following ingredients;

- i) Open, hostile and notorious possession; and
- ii) Animus possidendi.

The revenue entries, in my view, reflect the fulfillment of the

aforementioned ingredients and lead to irresistible conclusion that the appellants have become owners by efflux of time.

Vis-a-vis Regular Second Appeal No.1895 of 2014, which has arisen from the dismissal of Civil Suit No.49 of 2003, i.e., Suit No.1, in my view, the suit for declaration seeking adverse possession is not maintainable and rightly so, has been dismissed by both the Courts below. Thus, the findings rendered by both the Courts below are accordingly upheld.

Vis-a-vis Civil Suit No.473 of 2006, i.e., Suit No.2 keeping in view the aforementioned findings, I am of the view that the findings rendered by both the Courts below are not sustainable in the eyes of law as both the Courts below have not noticed the aforementioned facts, much less have not read the documents in correct perspective and referred the word “Haqdari” as authorised instead of legal right, thus, there is illegality and perversity in the findings and the same are hereby set-aside. Accordingly, Civil Suit No.473 of 2006, i.e., Suit No.2 seeking possession of the suit property is hereby dismissed. Thus, substantial question Nos.1 and 2 are answered in favour of the appellant-defendants and plaintiffs in Suit No.49 of 2003, i.e., Suit No.1 and substantial question No.3 is answered in favour of the respondent-plaintiffs and against the appellant-defendants.

The appeal arising out of Civil Suit No.49 of 2003, i.e., Suit No.1 is dismissed, whereas the appeal arising out of Civil Suit No.473 of 2006, i.e., Suit No.2 is allowed, in essence, Civil Suit No.473 of 2006 is dismissed.

December 19th, 2015
ramesh

(AMIT RAWAL)
JUDGE