

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

**RSA No.75 of 2015 (O&M)  
Date of decision: 12.01.2015**

Amrik Singh and others

... Appellants

Vs.

Om Parkash (died) through LRs and others ... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Inderjit Sharma, Advocate  
for the appellants.

**AMIT RAWAL J.**

This regular second appeal is directed against the judgement and decree of the lower Appellate Court whereby the judgment and decree of the trial Court has been set aside and the suit of the respondents-plaintiffs has been decreed.

Appellant-defendants has assailed the impugned judgment and decree on the ground that lower Appellate Court has committed illegality, perversity much less misread and misdirected in reading the oral and documentary evidence on record, thus urged the present regular second appeal involves following substantial questions of law:-

*“i) Whether the suit for declaration filed by the respondents No.1 and 2/plaintiffs for possession against the appellants who are GAIR DAKHILKAR*

*DOYAM (Tenant at Will) is maintainable before the Civil Court?*

*ii) Whether the suit filed by the respondents/plaintiffs No.1 and 2 after 34 years of the death of their predecessor of interest regarding suit property is well within limitation or hopelessly time barred?*

*iii) Whether the judgment under challenge are legally sustainable under the law or result of misreading of evidence on the file?"*

Plaintiffs-respondents filed a suit for declaration to the effect that plaintiffs and defendants No.5 to 8 are co-owners in possession to the extent of 2/3<sup>rd</sup> share in land measuring 5 kanlas 7 marlas as comprised in khewat No.7, khatouni No.10, killa No.24/2 (5-7) as per the jamabandi for the year 2004-05, Had Bast No.124, situated in village Lakhan Khurd, Tehsil and District Gurdaspur and further sought declaration that the entries in the revenue record showing Rakho Devi to be owner in possession to the extent of 7/24 share and Smt. Vimal widow of Lekh Raj and Suresh Kumar, Sanjay Kumar, Sandeep Kumar and Smt. Sunita, sons and daughters of Lekh Raj showing to be owners in possession, to the extent of 5/24 share in the suit land were wrong, illegal, null and void and therefore, liable to be rectified, consequential relief of permanent injunction restraining defendants No.1 to 4 from interfering in peaceful

cultivating possession of plaintiffs and defendants No.5 to 8 or dispossessing them from the suit land forcibly was also sought. In the alternative relief for possession of land measuring 5 kanals 7 marlas as described above from the defendants No.1 to 4, was also sought.

Defendants No.5 to 8 admitted the claim of the plaintiffs qua entry in the revenue record which was sought to be rectified. However, defendants No.1 to 4 contested the suit of the plaintiffs and claimed that they have become owners by way of adverse possession as shown in the column of cultivation in *Jamabandi* for the year 1984-85 (Ex.P4.).

For the sake of brevity, para No.9 of the plaint which dealt with cause of action is reproduced hereinbelow:-

*“9. That a cause of action arose to the plaintiffs few days back when the plaintiffs came to village Lakhan Khurd in order to collect the yield of wheat crop for the year 2010 and the defendants No.1 to 4 refused to give yield of the wheat crop to the plaintiffs and threatened to further cultivate the suit property illegally and forcibly. The cause of action also arose to the plaintiffs when they came to know regarding the wrong and illegal entries in the revenue record when they procured copy of jamabandi from the Patwari Halqa.”*

and the written statement filed by defendants No.1 to 4 is extracted hereinbelow:-

*“Sir,*

*It is submitted as under:-*

*Preliminary objections:-*

- 1. That the present suit is not maintainable.*
- 2. That the suit is time barred.*

*On merits.*

- 1. Denied for want of knowledge regarding allotment of land to one Mula Mal but rest of the contents regarding cultivation by Bawa Singh are denied specifically. Moreover, the onus is upon the plaintiffs to prove the facts of allotment.*
- 2. Denied for want of knowledge. The onus is upon the plaintiffs to prove facts mentioned in this para.*
- 3. Denied being incorrect.*
- 4. Contents of this para of the plaint are also denied being incorrect.*
- 5. Contents of this para of the plaint are denied being incorrect.*
- 6. Contents of this para of the plaint are specifically denied being incorrect. The answering defendants are in continuous cultivating possession on the land for the last more than 30 years and their possession is continuous uninterrupted and in the*

*knowledge of the plaintiffs and defendants No.5 to 8 and the public in large and has ripened to adverse possession and the plaintiffs and defendants No.5 to 8 have no right and interest in the suit property. The entries of the possession in the revenue record in favour of answering defendants are correct and are binding upon the plaintiffs who have lost their right and the suit is hopelessly time barred.*

*7. Denied being incorrect. The answering defendants are in possession on the suit property and the paddy planted by them is standing on the land and they have become owner by adverse possession and the plaintiffs and defendants No.5 to 8 have no right on the suit property.*

*8. Contents of this para of the plaint are denied specifically being incorrect. The possession of answering defendants have matured and have become adverse to the plaintiffs and defendants No.5 to 8 and they have no right to seek any claim and to seek possession in any capacity from the answering defendants.*

*9. Denied being incorrect. The suit is without any cause of action.*

*10. Denied being incorrect.*

11. *Denied for want of knowledge.*

12. *Legal.*

13. *Denied. The suit is not properly valued.*

*Prayer clause for declaration, permanent injunction and in alternative for possession are without any merits.*

*It is, therefore, prayed that the suit of the plaintiffs may be dismissed with costs.”*

The written statement do not confirm statutory provisions under Order 8 Rule 5 of the CPC. It is settled provisions of law in order to establish the plea of adverse possession, pleadings must be specific and categoric as to when the possession of the defendants became hostile to the entire world much less to the knowledge of the plaintiffs. There must be clear and specific “*Animus Possendi*”. The trial Court dismissed the suit of the plaintiffs on three grounds:-

*“i) That the Civil Court had no jurisdiction under Section 76 of the Punjab Tenancy Act, as defendants No.1 to 4 are tenants.*

*ii) The suit was barred by law of limitation.*

*iii) The claim of possession by way of alternative relief was also not maintainable.”*

The lower Appellate Court after examining the oral and documentary evidence much less provisions of law, allowed appeal (of respondent-plaintiff) inter alia held that perusal of the *jamabandis*

for the year 1984-85 and 1989-90 proved on record as Ex.P-4 and Ex.P3 respectively, reveal that after the death of Moola Mal, who was allotted the land, land was inherited by Rakho Devi, Parkash Wanti, Om Parkash and legal heirs of Lekh Raj. Further PW-Om Parkash categorically stated in his statement that after the death of Moola Mal, who died on 31.08.1976, the property in dispute was devolved upon his four legal heirs to the extent of 1/4<sup>th</sup> share each. However, while sanctioning the mutation, the share of Rakho Devi and legal heirs of Lekh Raj son of Moola Mal had been wrongly mentioned as 7/24 and 5/24 respectively, instead of 1/4<sup>th</sup> share each. Since defendants/respondents No.5 to 8 who are legal heirs of Lekh Raj son of Moola Mal admitted the claim of the appellants and defendants/respondents No.1 to 4 were held to have no title in the suit land, much less, any right, to dispute the share of the plaintiff and defendants-respondents No.5 to 8, which had been inherited by them from Moola Mal and set aside the findings of the trial Court. It also held that plaintiffs were not required to prove on record *Sajra Nasab (Kursi Nama)* to prove themselves as legal heirs of Moola Mal.

It is a matter of record that Rakho Devi, who is stated to have died, on 28.11.1988, her share devolved upon her two sons and one daughter namely Om Parkash, Lekh Raj and Parkash Wanti and thus, they became owners to the extent of 1/3<sup>rd</sup> share each. Even Parkash Wanti also died on 19.08.2007, her share devolved upon

her son Ashwani Kumar, plaintiff No.2 to the extent of 1/3<sup>rd</sup> share and thus, appellants became owners to the extent of 2/3<sup>rd</sup> share in the suit property and granted declaration in favour of plaintiffs and respondents No.5 to 8 by holding them owners to the extent of 2/3<sup>rd</sup> share in the land measuring 5 kanals 7 marlas. While dealing with the claim of the appellants-defendants No.1 to 4, the lower Appellate Court held that where the plea of adverse possession had been set up the ownership/title of the plaintiffs is admitted.

I have heard learned counsel for the appellant-defendants No.1 to 4. It has come on record that defendants No.1 to 4 did not lead any direct and cogent evidence to prove as to how and when their possession became adverse, for, claiming the relief of adverse possession, their possession has to be open, hostile and known to the entire world much less to the plaintiffs. Since appellants-defendants No.1 to 4 did not claim the plea of tenancy, there was no occasion for the trial Court to relegate the plaintiffs to claim under the Punjab Tenancy Act, particularly when appellants-defendants No.1 to 4 have been shown in the revenue record in cultivating possession, and did not claim the plea of tenancy. Both the pleas of tenant and adverse possession are mutually destructive to each other. Appellants-defendants No.1 to 4 were/are in unauthorized possession of the suit land, inasmuch, no evidence has come on record to enable them to become owners by way of adverse possession. In view of provisions of Article 65 of the Limitation Act,

the plea of limitation would not come to the aid of the appellants-defendants No.1 to 4, to claim the adverse possession as the said provisions provide limitation of 12 years from the date when possession become adverse. However, in the instant case, appellants and respondents No.1 to 4, miserably failed to prove the ingredient of Article 65 of the Limitation Act and therefore, the suit could not be said to be barred by law of limitation.

There is no illegality much less perversity in the findings rendered by Lower Appellate Court in setting aside the judgment and decree of the trial Court vide which the suit of the plaintiffs had been decreed.

No substantial question of law arises for adjudication of this appeal.

Accordingly, the appeal is dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**January 12, 2015**  
savita