

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

R.S.A. No. 4485 of 2014 (O&M)

Date of decision:- 20.05.2015

Bhoj Raj Singh and others ...Appellants

Versus

Bashir and anotherRespondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. R.K. Sharma, Advocate
for the appellants

Mr. J.S. Hooda, Advocate
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

C.M. No. 10387-C of 2015

For the reasons mentioned in the application, delay of 81 days in re-filing the present appeal is condoned.

The application stands disposed of accordingly.

R.S.A. No. 4485 of 2014

This regular second appeal is directed against the concurrent findings of facts recorded by both the Courts below whereby the suit of the plaintiffs-appellants (herein after to be referred as 'the appellants') was dismissed.

Brief facts of the case put forth by the appellants is that they are owners of agricultural land detailed in para 1 of the plaint.

Appellants resides at Gurgaon and Delhi. They used to come in the

village after long intervals. However, respondents encroached the suit land and put their huts, bitora and other structure over it. Appellant No. 1 moved the application before AC-II Grade Nuh for demarcation of suit land and same was demarcated by Abdul Hamid (Girdawari) on 04.09.2011. It was found that respondents have encroached the suit land. Thereafter, the appellants moved an application before the police for directing the respondents to remove their unauthorized encroachment. The police inspected the spot and the respondents compromised the matter with the appellants by giving an undertaking that they will remove their illegal encroachment from this land but this undertaking was not complied with. Now, respondents are threatening to raise pakka construction over the suit land and they are also intending to encroach the adjoining land bearing Killa No. 10/1 and 12/1. The appellants tried to stop the respondents to encroach the above said Killa No. 10/1 and 12/1 but respondents refused to do so.

On notice, the respondents filed their written statement and on merits, admitted that the appellants are recorded as owners of the suit land in revenue record. However, pleaded that their father named as Jumma is in actual physical possession over the suit land along with his family members which includes the respondents, thereafter, they acquired the status of adverse possession. The respondents came into possession over the suit land on 15.05.1965

after ousting the appellants from it and since then, the appellants are admitted the possession of the father of the respondents. The respondents admitted that the appellants moved an application to the police but they refused the factum of compromise as alleged in the plaint. The appellants in collusion with the police succeeded in obtaining thumb impression of respondents fraudulently and no compromise was effected between the parties.

After going through the evidence led by the parties, both the Courts dismissed the suit filed by the appellants.

The plea of adverse possession was examined. The appellant Hari Singh in his cross examination had admitted that Juma s/o Chhuman is residing in the suit property since six months from the filing of the suit. He has further stated that a kacha chhappar shown at point A in the photograph Mark A was made by Jumma, but he does not know the date. He further admitted that house shown at Mark D is also in his land. On the suit land, Tayyub, husband of Majidan, is residing along with Jumma, who had constructed the house on their property without their consent. Jumma is residing in his 1 kanal 17 marlas of the land. P.W.2 Netarpal, in his cross examination admitted that he came to know 2 ½ months before that Jumma along with his son-in-law and wife residing on the suit property along with Jumma.

Abdul Hamid who had proved on record his demarcation report Ex

PW5C/A found in his nakasha Tafawat Ex PWC/B that the suit land has been encroached upon by the respondents. In his cross examination, he admitted that the houses constructed on the spot are 15 years old. As per Article 65 of the Schedule of the Limitation Act. 1963 limitation to file suit for possession of immovable property or any interest therein based on title, is 12 years when the possession of the respondents becomes adverse to the appellants. Thus, the suit was held to be barred by limitation. However, it has been held that the respondents cannot take the plea that they have become owners on account of adverse possession. They can only take plea that they have become owners of the suit land, as the appellants have not filed the suit within limitation.

65. For possession for immovable property or any interest therein based on title. Explanation : For the purposes of this article-	Thirty years	When the possession of the defendant becomes adverse to the plaintiff.
(a) Where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;		
(b) Where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;	Twelve years	
(c) Where the suit is by a purchaser at a sale in execution of a decree when the judgement-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgement- debtor who was out of possession.	Twelve years	

Appellant No. 1 had admitted in his cross examination that Jumma was residing in the suit property along with his family members. Jumma has not been impleaded as party in the suit, which

was the necessary party to the suit and thus no adverse order could be passed in his absence. No evidence was led by the appellant to show that the respondents were encroaching upon land bearing Killa No. 10/1 and 12/1 and the claim of the respondents for adverse possession was only qua the suit land i.e rect No. 52 Killa No. 11/1 (17-1).

Both the Courts have rightly dismissed the suit of the appellant on the ground of limitation and non-joinder of necessary party.

The judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, appeal is dismissed.

20.05.2015

G Arora

(**RITU BAHRI**)
JUDGE