

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

RSA No.4733 of 2014 (O&M)

Date of decision : 15.07.2015

Satbir

...Appellant

versus

Shanti Devi & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. B.K.Bagri, Advocate for the appellant.

RITU BAHRI, J (Oral)

CM No.11103-C of 2014

There is a delay of 02 days in re-filing the appeal.

For the reasons mentioned in the application, the same is
allowed and the delay of 02 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.4733 of 2014

The appellant/plaintiff has come up in regular second appeal against the judgment of the trial Court dated 31.05.2011 and the lower appellate Court dated 15.03.2014, whereby the suit of the plaintiffs for possession has been dismissed on the ground that the suit was barred by limitation.

The case of the plaintiffs was that the plaintiffs were the owners in possession of khewat No.197, khatno No.215, khasra No.120 total measuring 1 kanal 16 marlas in the revenue estate of

village Sahdutt Nagar, Tehsil Kosli, District Rewari as per the jamabandi for the year 1996-97. In a suit filed by the plaintiffs in the Court titled as Basanti Vs. Gram Panchayat Sahadutt Nagar, the Court had ordered the demarcation of plot No.120 in Tehsil Kosli. After the demarcation was done by Tehsildar Kosli the suit property, the defendant No.1 has illegally encroached upon the share of the plaintiff to the extent of 37 sq. mtr. and defendants No.2 to 5 have illegally encroached upon the share of the plaintiffs to the extent of 39 sq. mtr. without any justification. On notice, the defendants appeared and filed separate written statements taking the plea that the suit was barred by time. It was averred by defendant No.1 that he was not a party in the previous suit and plot in dispute was not demarcated in his presence, therefore, the demarcation report is not binding upon him. It was further averred that the possession of defendant No.1 is continuous over the suit land and the same is within the knowledge of the plaintiff from 15.06.1970.

Defendants No.2 and 5 in their written statement submitted that they had constructed the northern wall of khasra No.121 in the year 1973 and constructed their house over khasra No.121 and no objection was raised by the plaintiffs. Demarcation report dated 09.05.2007 was wrong, illegal and arbitrary and not according to the spot. As per the report of the local commissioner placed on the record in the case titled as Gram Panchayat Vs. Smt.Bansanti Devi & ors. Ex.P1, the encroachment of the land of the plaintiffs was duly proved.

The defendants were present at the time of demarcation dated 09.05.2007 by the Naib Tehsildar, Kosli. Defendant No.1 stated that he was not present when the local commissioner had conducted demarcation and local commissioner had been appointed in the suit where defendant No.1 was not a party. The trial Court, after considering the documentary evidence in the shape of jamabandi for the year 1996-97 Ex.P4, copy of mutation No.15224 as Ex.P5, copy of Aks-Sajra Ex.P6 and in view of the local commissioner's report decided issues No.1 to 3 being interlinked in favour of the plaintiffs. The trial Court proceeded to decide issue No.9 which related to issue of limitation. The plaintiffs admitted that the construction was raised by defendants No.2 to 5 as well as defendant No.1 more than 12 years ago. The suit for possession should have been filed within a period of 12 years. In the deposition by PW2 he admitted that the construction was raised by Dalip and others about 14-15 years ago and even the wall in between the house of Rampat and Basanti was also constructed 20 years ago. This fact was fully admitted by PW3 that the wall of Rampat was constructed about 20 years ago. Since the suit was not filed within the limitation, it was considered to be hopelessly time barred. The trial Court thereafter decided issue No.4 that the plaintiffs were not entitled of possession of disputed portion as the suit was time barred. Issues No.5, 6, 8 and 10 were not pressed.

The lower appellate Court reversed the findings on issues No.2 and 3 and held that even that the demarcation of the suit property

was admitted by the examining witnesses by the defendants but the same was not enough for proving the encroachment alleged to have been made by the defendants. The report of the local commissioner may be used for corroborated purpose only and cannot be taken as a substantiated piece of defence against the defendants. The lower appellate Court thereafter affirmed the finding of the trial Court that the suit should have been filed within 12 years from the cause of action and the suit being filed after 12 years from the date of construction was time barred. With the above modifications, the appeal of the plaintiffs was dismissed.

The Hon'ble Supreme Court recently in the case of **Tribhuvanshankar Vs. Amrutlal 2014 (1) RCR (Civil) 206**, has held that when a person who has a right of possession but allowed his right to be extinguished he cannot be a person in adverse possession. The object under Section 5 of the Limitation Act, 1963, is that if a person does not pursue his remedy within a specific time frame, the right to sue gets extinguished. The owner of the land case is positive consent to the possessor to remain in possession cannot file a suit after the limitation is expired to claim possession. Relevant para No.31 of the said judgment is reproduced for ready reference as below:-

“31. Keeping in view the aforesaid principles it is required to be scrutinized whether the time spent in adjudication of the present suit and the appeal arrests the running of time for the purpose of adverse possession. In this regard, we may profitably refer to the decision in Mst.Sultan Jehan Begum and Ors. v. Gul Mohd. and Ors. wherein following principles

have been culled out: -

- “(1) When a person entitled to possession does not bring a suit against the person in adverse possession within the time prescribed by law his right to possession is extinguished. From this it only follows that if the former brings a suit against the latter within the prescribed period of limitation his right will not be extinguished.*
- (2) If a decree for possession is passed in that suit in his favour he will be entitled to possession irrespective of the time spent in the suit and the execution and other proceedings.*
- (3) The very institution of the suit arrests the period of adverse possession of the defendant and when a decree for possession is passed against the defendant the plaintiff's right to be put in possession relates back to the date of the suit.*
- (4) Section 28 of the Limitation Act merely declares when the right of the person out of possession is extinguished. It is not correct to say that that section confers title on the person who has been in adverse possession for a certain period. There is no law which provides for 'conferral of title' as such on a person who has been in adverse possession for whatever length of time.*
- (5) When it is said that the person in adverse possession 'has perfected his title', it only means this. Since the person who had the right of possession but allowed his right to be extinguished by his inaction, he cannot obtain the possession from the person in adverse possession, and, as its necessary corollary the person who is in adverse possession will be entitled to hold his possession against the other not in possession, on the well settled rule of law that possession of one person cannot be disturbed by any person except one who has a better title.”*

The ratio of the judgment of the Hon'ble Supreme Court
fully applicable to the facts of the present case. The plaintiffs admitted

that the wall on a disputed land dividing the construction was constructed 15 to 20 years back. Once, they had given a consent right to the defendants to occupy the land in dispute which belong to them for a period of more than 12 years by getting a demarcation report Ex.P1 in another suit in the year 2007, the limitation will not start from the year 2007 and the possession of the defendants was in knowledge of the plaintiff's right from the beginning, the local commissioner's report would not create a new limitation to enable them to file a suit for possession. The judgments of the trial Court and the lower appellate Court do not suffer from any illegal infirmity and no substantial question of law arises in this appeal for adjudication.

Dismissed.

15.07.2015
Vinay

(RITU BAHRI)
JUDGE