

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1)	CR No. 3820 of 2014 (O&M) Date of Decision: March 17, 2016	
Panna Devi and others		...Petitioners
	Versus	
Ram Lal land others		...Respondents
(2)	CR No. 3772 of 2014 (O&M)	
Deen Dayal alias Dindayal		...Petitioner
	Versus	
Ram Lal land others		...Respondents
(3)	CR No. 3773 of 2014 (O&M)	
Raghbir Singh		...Petitioner
	Versus	
Ram Lal land others		...Respondents
(4)	CR No. 5211 of 2014 (O&M)	
Ranjeet		...Petitioner
	Versus	
Kuldeep Malik land others		...Respondents
(5)	CR No. 5212 of 2014 (O&M)	
Sumat Parsad		...Petitioner
	Versus	
Kuldeep Malik land others		...Respondents

(6) CR No. 5250 of 2014 (O&M)

Balle Ram

...Petitioner

Versus

Kuldeep Malik land others

...Respondents

(7) CR No. 5258 of 2014 (O&M)

Itwari and another

...Petitioners

Versus

Kuldeep Malik land others

...Respondents

ORAM:- HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sudhir Aggarwal, Advocate,
for the petitioner.

Mr. Rakesh Nehra, Advocate,
for the respondents.

K. KANNAN, J. (Oral)

1. The revisions are against the orders passed in independent suits of a like nature bringing a plea of adverse possession in the replication to the counter claim filed by the defendants. Initially, when the suits were filed by the plaintiffs they had contended that they are in possession of the respective properties by construction of houses. Such suits were not accompanied by any plea of adverse possession . In the written statements filed and in the counter-claims made by the defendants, they contended that the plaintiffs are trespassers and are in unauthorized possession. It is also contended that the plaintiffs are not entitled to retain the possession. The respective plaintiffs have filed rejoinders which are in the nature of the written statement to the counter claim contending that the defendants have

admitted the plaintiffs' possession at several portions of the counter claim and that the possession and the ownership of the plaintiffs are proved by facts of raising of construction of residential houses over the suit land. In the replications, there is no reference to adverse possession and this plea of adverse possession is brought by an amendment subsequently after the respective plaintiffs have examined their witnesses and in the course of trial. What was stated by means of amendment taking specifically a case of adverse possession has been rejected by the court below and hence the revision petitions.

2. Adverse possession is a source of title and there is nothing inherently wrong for a plaintiff to seek for an injunction on the basis that he is in possession and that he has prescribed the title by way of adverse possession. However, there is a judicial tendency of this Court and also a recent decision of the Supreme Court in Gurudwara Sahib Versus Gram Panchayat Village Sirthala and another (2014) 1 SCC 669 that adverse possession cannot be claimed by the plaintiffs. Conscious of a legal limitation as betset by the judicial pronouncements, the plaintiffs have stated that they have been in possession of the properties and they are the owners by putting up construction without stating in express words that they were claiming right over the property by adverse possession. When initial suits for injunction filed by the respective plaintiffs on the basis of possession were contested by the defendants on an express admission that the plaintiffs were in possession and they were seeking for recovery of possession by counter claim, the plaintiffs were denying the defendants' right to recover possession. The respective contentions of parties have

come in the following fashion. In para 3 of the written statement, it is stated as follows:-

“The plaintiff has no connection whatsoever with the ownership and possession of the suit land. The plaintiff is out of possession of the suit land so there is no question of adverse possession of the plaintiff, his father and grand father over the suit land. Moreover, the plea of adverse possession is not available to the plaintiff. The plea of adverse possession can be used as a shield and not as a sword as has been held by our own Hon'ble High Court in case Bhim Singh and others Versus Zile Singh and others reported in PLJ 2006 (1) page 420, so the suit of the plaintiff is not maintainable in the present form...”

It is this averment in the written statement in paragraph 3 that the plaintiffs have refuted in their respective replications by saying that they were not making a plea of adverse possession. The self denial of a plea of adverse possession was in their capacity as plaintiffs. When the defendants were making a counter claim, the person who filed the plaint as plaintiff had a dual capacity as defendants so far as the response to the counter claim was concerned. What they denied originally as plaintiffs that they did not assert adverse possession became possible for them to state when a counter claim was pressed seeking for recovery of possession. Order 8 Rule 6 A (4) of the Civil Procedure Code states as follows:-

“The counter claim shall be treated as a plaint and governed by the rules applicable to plaint.”

When the defendants were, therefore, delivering a counter claim, they were

literally setting out a plaint for recovery of possession.

3. The plaintiffs, who were delivering a rejoinder must be taken as delivering a written statement when they were filing a rejoinder. If as the plaintiffs they were not claiming adverse possession, they were entitled to plead by means of the replication, which is akin to written statement that they had also prescribed title to the property by adverse possession. At all times in the plaint, the plaintiffs have pleaded for long continuous possession over 40 years. If the possession is admitted and not shown to be permissible, it is at once adverse.

4. It is a wrong understanding of law that a person who pleads adverse possession must be taken to concede the title in the opposite party. A title can be adverse by knowing a particular person to be the true owner or it can become adverse by a person holding his possession of hostile holding to the whole word. In either event, it is the animus possessendi that will secure a person asserting the right to also establish his adverse possession. I have no doubt in my mind that the plaintiffs are not introducing a new plea which is not already there. An assertion of exclusive holding for more than 40 years has been expressed in the plaint as well as in the original application. They have asserted at several places that they are the owners in possession. The manner of acquisition of such ownership could just be proved by adverse possession.

5. The amendment could be denied only in a situation where a person was withdrawing from some admission which can prejudice the other side. If the plaintiffs had made no admission at any point of time that the possession was permissive but had contended at all times that the

possession was as an owner more than 40 years, the manner of such acquisition by adverse possession to claim ownership is surely tenable. The amendment sought brings a legal colour to a plea which is already there. The applications for amendment ought to have been allowed.

6. The impugned orders are set set aside and the revisions are allowed.

March 17, 2016
prem

(K.KANNAN)
JUDGE