

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

**Regular Second Appeal No.1745 of 1986 (O&M)
Date of Decision: February 04, 2016.**

Jai Bhagwan and others

.....APPELLANT(s).

VERSUS

Siri Ram and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. K.S. Sidhu, Senior Advocate with
Mr. G.S. Benipal, Advocate
for the appellant (s).

Mr. Girish Agnihotri, Senior Advocate with
Mr. Arvind Seth, Advocate
for respondent (s).

SURINDER GUPTA, J.

The substantial question of law which arise for consideration in this appeal is *as to whether the plaintiff can seek declaration that his possession over a property has matured into ownership by way of adverse possession.*

2. Plaintiffs Siri Ram and Sadhu Ram are in possession of the suit land. Though the suit land has not been definitely described in the plaint but from the pleadings and evidence on record, the first Appellate Court deciphered land in dispute as 13 kanals 15 marlas comprising of khasra No.48//1/2, 2 and 3/1 owned by Kishna father of defendant Jagmohan, situated in village Dhanora Jagir, Tehsil and District Karnal. Learned Sub

Judge 2nd Class, Karnal declared the plaintiffs as owner of the suit land with the observation as follows:-

“13. Undisputedly the proclamation of ownership referred to above was made by the plaintiffs more than twenty years ago. Their possession has become continuous, peaceful, undisturbed, open and hostile to the real owners. Thus the ingredients of adverse possession have been alleged and substantiated by the plaintiffs and, therefore, I hold the plaintiffs to have become owners by way of adverse possession.”

3. The first Appellate Court affirmed the finding of the lower Court with the observations that from the year 1954-55, the possession of plaintiffs over the suit land is recorded as '*Bashrah Malkan Ba TasawarMalkeet Khud*'. The entry was never challenged by the defendants. From 1954-55, plaintiffs had stopped paying the rent which they were paying earlier and their possession has matured into title.

4. A reference was made in case of *Vijay Bhawar and others Vs. Ajaib Singh (deceased) though his LR in RSA No.2561 of 1985* by single bench of this Court for decision by a larger bench on the question “*as to whether the plaintiff is competent to seek declaration of title of the property by adverse possession or whether the same is available only to the defendant to plead the same as defence in a suit for possession filed by the plaintiff on the basis of title.*”

5. While answering the above question vide judgment dated 08.12.2014 (reported as *2015(3) RCR (Civil) 604*), division bench of this Court held that no declaration can be sought by plaintiff with regard to the

ownership on the basis of adverse possession, as such a plea is available only to defendant. The Division Bench while making above observation relied on Apex Court's judgment in case of ***Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and anr. (2014) 1 S.C.C. 669***, wherein para 8, it was observed as follows:-

“8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

6. In view of the settled proposition of law, the substantial question of law as framed in this appeal is answered in favour of the appellants-defendants and the judgments and decree passed by the Courts below declaring the plaintiffs as owners of the suit land by way of adverse possession are set aside.

7. The findings of the Courts below regarding the possession of plaintiffs over the suit land is based on entries in the revenue record, which call for no interference. Even otherwise, Jai Bhagwan and Malkiato appellants have filed a civil suit No.587 of 1982 seeking the relief of permanent injunction regarding this land. That suit was filed on 12.12.1981 and decided on 30.01.1984 and was dismissed. That judgment is not on file and has been referred by learned counsel for the respondents during the course of arguments. Even if, no notice of the above judgment is taken, learned counsel for the appellants could not assail the findings of the Courts below regarding the possession of the plaintiffs over the suit land.

8. In view of the above, this appeal is partly accepted. The judgments and decree passed by the Courts below to the extent of declaring the plaintiffs as owners of the suit land, are set aside. However, the remaining part of the judgment and decree of Courts below is affirmed.

9. Keeping in view facts and circumstances of the case, parties are left to bear their own costs.

February 04, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE