

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

RSA No.306 of 1986 (O&M)

Date of decision : 21.09.2016

Jit Singh and others

...Appellants

Versus

Bhag Singh and others

(deceased through LRs)

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. V.K. Sachdeva, Advocate for the appellants.

Mr. A.S. Barnala, Advocate for respondents.

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby suit seeking declaration that they are owner in possession of the land in dispute by adverse possession and permanent injunction restraining the defendants from dispossessing, had been dismissed, in essence, judgment and decree rendered by the trial Court dated 19.12.1983 has been set aside.

Mr. V.K. Sachdeva, learned counsel appearing on behalf of appellants-plaintiffs submits that plaintiffs had sought the declaration and consequential relief of injunction aforementioned, on the ground that all the jamabandies showing the exclusive possession and the possession had been continuous, long and uninterrupted and acquired to the knowledge of the other co-sharers for the last 20-30 years, therefore, essential ingredients of the ousters has been not only pleaded but proved. Considering this fact

particularly Ex.P11 order of the Settlement Officer Consolidation, the trial Court decreed the suit but the Lower Appellate Court has assigned no cogent reasons, much less, positive reasons in setting aside the findings. There is no reference to the documents aforementioned, thus, there is gross misreading, resulting into illegality and perversity. No doubt co-sharer or any other person cannot set up a plea of adverse possession in affirmative but the injunction could have been granted as the plaintiffs had been in exclusive possession vis-a-vis other co-sharers, therefore rigours of the guidelines/principles as culled out by Full Bench of this Court in *Bhartu Vs. Ram Sarup, 1981 PLJ 204*, reiterated by Division Bench in *Bachan Singh Vs. Swaran Singh, 2000(3) RCR (Civil) 70*, would not come into way rather it would support their case and urges this Court for setting aside of the impugned judgment and decree.

Per Contra, Mr. A.S. Barnala, learned counsel appearing on behalf of respondents-defendants, submits that declaration on the basis of the long and settled possession in affirmative i.e. the plea of adverse possession by co-owners cannot be taken as all the co-owners even if not in possession is owner of every inch of land. If at all proceedings in partition had been initiated, the aforementioned plea can be taken, but not in the manner and mode and thus urges this Court for affirming of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that Ex.P11 shows that notice in question was served upon Arjan Singh and Mehnga Singh sons of Mehtab Singh at the instance of Chanan Singh etc. No documentary evidence has been placed on

record to connect the relationship between the plaintiffs and defendants. The appellants and defendants are co-sharers. No other co-sharers cannot take the plea of adverse possession or of ouster in affirmative but can set up in proceedings initiated seeking partition of the suit land and supported by direct and cogent evidence even not through corroborative evidence. In my view, the relief of declaration could not be granted and rightly so, the lower Appellate Court below reversed the findings. Injunction cannot be granted as the plaintiffs have not been able to prove the exclusive possession. All the jamabandies for the year 1968-1969, 1973-1974 and 1978-1979 shows the possession of all the co-sharers.

There is no force in the submission of Mr. Sachdeva, in relying upon the findings of the trial Court to connect the relationship of Arjun Singh and Mehnga Singh with the present appellants and the defendants, for, there is no pedigree table. The findings of the trial Court is based without any documentary evidence i.e. pedigree table, therefore, plea is rejected.

For the foregoing reasons, I do not intend to differ with the findings rendered by the lower Appellate Court as they are in consonance with the settled proposition of law.

No ground for interference is made out.

Accordingly, present appeal is dismissed.

21.09.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No