

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

RSA No.1239 of 1987 (O&M)

Date of decision : 29.04.2016

State of Punjab and another

...Appellants

Versus

Dr. Jagan Nath and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Vinod S. Bhardwaj, Addl. A.G. Punjab.

Mr. Pardeep Goyal, Advocate for respondent Nos.19 to 24.
(In CM No.8400-C of 2014)

Mr. Amarjit Markan, Advocate and
Mr. Kanwal Goyal, Advocate for the applicants
(In CM No.8305-C of 2014)

Mr. Vikas Lochab, Advocate for respondent Nos.6 to 10.

AMIT RAWAL, J. (Oral)

CM No.5319-C of 2016

Allowed, as prayed for.

Main Case

The appellant-State of Punjab is aggrieved of the concurrent findings of fact, whereby suit at the instance of respondent-plaintiff

claiming declaration and permanent injunction on having become owner in possession by efflux of time has been decreed.

Mr. Vinod S. Bhardwaj, Additional Advocate General, Punjab submits that plaintiff could not have sought relief in affirmative at the best in case any action had been taken against in accordance with law, plea in defence could be taken. He further submits that finding qua extinguishment of right given by the lower Appellate Court be treated as Obiter for the reasons that State cannot be prevented to seek remedy in accordance with law for seeking possession as it does not amount to extinguishment of right. In support of his contention, has cited judgment rendered in Bhim Singh Vs. Zile Singh, 2006(3) RCR (Civil) 97. He submits that following substantial questions of law arises for determination:-

1. Whether the suit seeking declaration and permanent injunction on the basis of long and settled possession by setting up the claim of adverse possession in affirmative is maintainable or not?
2. Whether the judgment and decree rendered by both the Courts below suffers from illegality and perversity?

Mr. Amarjit Markan, assisted by Mr. Kanwal Goyal and Mr. Pardeep Goyal, submits that categoric stand taken in the plaint was that Government i.e. appellant-defendant No.1-State had extinguished its right to claim the ownership in view of provision of Section 27 of the Indian Limitation Act, 1963, therefore, the averments culled out in the plaint not specifically sought in the prayer would be read as conjunction and therefore decree should be treated in such manner and urges this Court for

affirming the findings rendered by the Courts below.

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the paragraph Nos.11 to 13 of the plaint:-

“11. That on the coming into force of the Evacuee Interest Separation Act, 1951 the mortgage stood automatically extinguished u/s 9 of the said Act as the mortgagee had already remained in possession of the mortgaged land for a period of more than 20 years prior to the coming into force of this Act.

12. That the aforesaid mortgaged property vested in the Central Govt. on 30/10/1951 the date on which the Evacuee Interest Separation Act came into force and the Central Govt. became the owner thereof since 30/10/1951. Thereafter the State of Punjab became the owner of this property.

13. That Sh. Pir Chand during his life time and after his death the plaintiffs have continued to be in possession of the suit property continuously, openly notoriously in their own right as owners adversely for a period of more than 30 years from 30/10/1951 and have thus become the absolute owners thereof and their title as owners has become indefeasible on account of adverse possession. The right, title and interest of the defendant State of Punjab stands extinguished.”

and the corresponding paragraphs of the written statement:-

“11. With regard to para 11 of the plaint, it is submitted that according to Section 9(2) of the Evacuee Interest (Separation) Act, 1951, the mortgage stood extinguished on the expiry of 20 years and the custodian of Evacuee

Property automatically became owner of the suit land. It has been held by a Division Bench of Punjab and Haryana High Court on 19.9.68 in 1969 PLR 106 that in such cases, it is open to the custodian to take possession of the property by evicting the mortgagees in accordance with law. Shri Pir Chand and his successors-in-interest continued to remain in possession of the suit land under the defendants as an unauthorized occupant and are liable to pay damage in the shape of rent for use and occupation of the suit land.

12. As regards para 12 of the plaint, position of the defendants has been explained in the preceding paragraphs.

13. Para 13 of the plaint is denied being incorrect in view of the facts explained in the preceding paragraphs.”

No doubt that averments in the written statement have been very evasive and vague but the fact remains that relief agitated in the plaint qua the declaration could not have been sought in the affirmative. Respondent-plaintiff could have taken the plea in defence as and when any measures are taken for seeking possession on the basis of the title.

No doubt the lower Appellate Court has given observations with regard to the extinguishment of the right of the State to claim possession having lost the right and title by invoking the provision of Section 27 of the Limitation Act but in my view said finding should not come into way of the appellant-defendant in view of the reasons given hereinabove regarding maintainability of the suit. The trial Court while decreeing the suit also granted injunction restraining the defendant, employees, agents from dispossessing them, much less, interference in the

possession of the land.

I am of the view that plaintiff did not seek prayer with respect to the averments extracted (supra) and, therefore, findings rendered by the lower Appellate Court is directed to be treated as “OBITER”.

Accordingly, judgment and decree of the Courts below vis-a-vis declaration is hereby set aside. However with regard to the permanent injunction is modified by holding therein that appellant-defendant, their employees, agents etc. are restrained from dispossessing the plaintiff from the suit land, much less, causing interference in the possession except in due course of law. In case any proceedings are initiated either under the provision of Code of Civil Procedure or any other law in force, the respondent-plaintiff shall be at liberty to take all the pleas vis-a-vis title and extinguishment of the right and authority trying shall decide the same in accordance with law. Authority trying and entertaining the petition shall frame the issue and give effective opportunities to the parties to lead evidence, plaintiff-respondent or their successor-in-interest/subsequent vendees are at liberty to take all pleas.

With the aforementioned modification in the impugned judgment and decree, appeal is partly allowed.

Competent Authority or any Court deciding lis shall decide the matter uninfluenced with the findings rendered by this Court.

29.04.2016

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(AMIT RAWAL)
JUDGE