

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

1. RSA No.2978 of 1987 (O&M)
Date of decision : 21.09.2016

Balwant Singh

...Appellant

Versus

Ujagar Singh and others

..Respondents

2. RSA No.2169 of 2003 (O&M)
Date of decision : 21.09.2016

Gurmail Kaur and others

...Appellants

Versus

Balwant Singh

..Respondent

3. COCP No.955 of 2002 (O&M)
Date of decision : 21.09.2016

Balwant Singh

...Appellant

Versus

Ujagar Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Surjit Singh Swaich, Advocate for appellants.
(In RSA No.2169 of 2003)
for respondent No.1 and LR's of respondent Nos.2 and 3
and Angrej Kaur, Gurmail Kaur, LR's of respondent No.7.
(In RSA No.2978 of 1987)

Mr. K.S. Boparai, Advocate for the appellant.
(In RSA No.2978 of 1987)
for the respondent (In RSA No.2169 of 2003)
for the petitioner (In COCP No.955 of 2002)

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two aforementioned appeals
and one contempt petition aforementioned.

The appellants-plaintiffs are aggrieved of the concurrent
findings of fact, whereby suit seeking following reliefs:-

“Suit for a decree for declaration to the effect that the plaintiff is the exclusive owner by way of adverse possession and also by virtue of oral family settlement entered into between the parties in the year 1968 of agricultural land measuring 36B-10B comprised in khewat No.385, khatauni No.559, khasra No.2349, khewat No.397, khatauni No.577, khasra No.2350, 2389, 2390, khewat No.326, khatauni No.461, khasra No.2351, khewat No.271, khatauni No.398, khasra No.2351/1, 2352, according to the jamabandi for the year 1976-77 situated in Village Ghaloti, Sub Teh Payal, Distt. Ludhiana and land measuring 44B-14B comprised in khewat No.249, khatauni No.318, khasra No.1061, khewat No.251, Khatauni No.320, khasra No.1058, 1059, 1060, 1062, khewat No.760, khatauni No.897, khasra No.1120 and 1121, khewat No.620, khatauni No.736 khasra numbers 1639, 1640, 1641, 1642, as entered in the jamabandi for the year 1979-80 situated

in village Ghudani Kallan 'A' Sub Tehsil Payal, District Ludhiana and also suit for a decree of permanent injunction restraining the defendants from forcibly and illegally and otherwise than in due course of law dispossessing the plaintiff from the suit land on the basis of oral and documentary evidence.”

has been declined by the Courts below.

Mr. K.S. Boparai, learned counsel appearing on behalf of appellants submits that Ram Jas was the common ancestors of the parties. He had four sons namely Kaka Singh, Nikka Singh, Bachan Singh and Babu Singh. The plaintiff being son of Kaka Singh, defendant Nos.1 to 3 are sons of Nikka Singh whereas defendant Nos.4 and 5 are grandsons of Bachan Singh and defendant No.7 is widow of Bachan Singh. In the year 1952, Ram Jas including Kaka Singh father of the plaintiff purchased the land in the State of Uttar Pradesh, out of the amount which was contributed by all the brothers in equal shares. The suit land was owned by four brothers namely sons of Ram Jas at Village Ghaloti and Ghudani Kalan. In 1965, vide Ex.P5, parties entered into a family settlement and the suit land had fallen to the share of the plaintiff, it is, on this ground, suit was filed. He further submits that vide aforementioned family settlement, plaintiff is in possession of the suit land as owners and the defendants are permanently settled in U.P., in essence, they have severed their links from villages, in question. It is only when defendant started ascertaining their right and threatened the plaintiff to surrender the possession of their share of the land, suit aforementioned was filed. Defendants have not been able to place on record any documentary evidence to show the ownership, therefore, they have no right. The findings

rendered by both the Courts below are not sustainable in the eyes of law as jamabandi for the year 1976-1977 Ex.P7, possession of the plaintiff is shown as co-sharers and in Ex.P8 jamabandi for the year 1979-1980, the land is shown to be in possession of all the co-sharers and so is the position with the jamabandi Ex.P9 and Ex.P10. Khasra girdawaries Ex.P11 and Ex.P12 also proves the aforementioned fact. In fact, co-owners can set up a plea of adverse possession vis-a-vis other co-owners in case possession is proved by pleading ouster and the factum of continuous possession has been proved yet Courts below declined the relief and thus urges this Court for setting aside of the concurrent findings of the fact.

Mr. Surjit Singh Swaich, learned counsel appearing on behalf of respondent No.1 and LRs of respondent Nos.2 and 3 and Angrej Kaur, Gurmail Kaur, LRs of respondent No.7 in RSA No.2978 of 1987 submits that appellant-plaintiff has failed to prove on record their exclusive possession vis-a-vis other co-owners of the land. The aforementioned jamabandies does not show the physical possession, therefore, plea of adverse possession is neither here nor there and rightly rejected the relief and thus urges this Court for affirming of the concurrent findings of fact, remedy if any is only to seek partition.

As regard other RSA No.2169 of 2003, suit instituted for permanent injunction at the instance of defendants in RSA No.2978 of 1987 but the same has also been dismissed as appellant has not been able to prove their possession.

Mr. K.S. Boparai, learned counsel submits that respondents

have violated the status-quo order by dispossessing them and, therefore, liable to be hauled up in contempt proceedings.

I have heard learned counsel for the parties and appraised the paper book and of the view that jamabandies referred above, do not show the exclusive possession of the plaintiff. No doubt, co-owners can setup a plea of adverse possession but as defence and not in affirmative particularly, in case suit had been filed by the respondents-defendants seeking partition. The aforementioned observation of mine is supported by the judgment rendered by *Bhim Singh and others Vs. Zile Singh and others, 2006(3) RCR (Civil), 97 and Vijay Bhawar and others Vs. Ajaib Singh (d) through his LRs, 2015(3) RCR (C) 604*. The appellants have also not attempted to bring the suit within the provision of Section 27 of Limitation Act, 1963 regarding extinguishment of the right of the co-owners vis-a-vis defendants. Had it been so, or any evidence lead, things would have been different. In the absence of the same, such a plea cannot be taken in affirmative and rightly so, the Courts below have declined the relief.

I do not intend to differ with the aforementioned findings.

As regards other appeal, appellant in that case has not been able to prove the possession and, therefore, rightly so, the Courts below have declined the relief.

Accordingly, both the appeals are dismissed.

Since I have dismissed the main appeal, therefore, no cause survives in the contempt petition. Same is dismissed accordingly.

Vide miscellaneous application bearing No.4935 of 2014 an

attempt has been made to bring on record the LR's of defendant No.7.

Mr. Swaich, submits that LR's of defendant No.7 have already brought on record before the lower Appellate Court. If at all, appellants and defendants arrived at compromise, they shall be at liberty in seeking the execution in accordance with law. Order dated 13.05.1988 reads thus:-

“During the pendency of the appeal, two of the respondents, namely Gurdev Singh and Shamsher Singh, filed an application along with affidavits U.O. 23, R 1, Code of Civil Procedure, admitting the claim of the appellant. Mr. Puri concedes that the decree to the extent to which the claim of the appellant has been admitted has to be modified. In view of this, I modify the decree of the learned appellate court to the extent indicating above and dismiss qua the remaining part. However, the parties are left to bear their own costs.”

Even findings given by the lower Appellate Court qua injunction is not sustainable in view of the averments made as there is categorical pleadings that the plaintiff has been dispossessed. The parties are relegated to take appropriate remedy of partition in accordance with law.

It is open to the plaintiff to take the plea of ouster in case any proceedings for partition are initiated.

Appeals stands partly allowed.

21.09.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No