

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

RSA No.611 of 1990

Date of Decision:17.05.2016

Yad Ram and others

.....Appellants

Vs

Murti Behari Ji

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Ritesh Aggarwal, Advocate with
Mr. Nitin Sarin, Advocate
for the appellants.

Mr. Alok Jain, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Defendants filed this appeal against the concurrent judgments and decrees passed by the Courts below, decreeing the suit of the plaintiff for possession.

[2]. Plaintiff filed suit for possession in respect of property marked by letters 'A,B,C,D,E,F,G' shown by red and white colour in the site plan Ex.PW11/1 minus property shown by green colour marked as K1, K2 and K3. Plaintiff averred that he was owner of this property. One Chhutan and his son Ram Sarup were tenants over the whole of the property shown under

the plaintiff. Chhutan and Ram Sarup had executed a rent note on 11.12.1936 Ex.PW4/1. Defendants No.2 and 3 were sons of Chhutan and defendant No.1 is son of Prabhu Dayal son of Chhutan i.e. grand son of Chhutan.

[3]. After the death of Chhutan, rent note Ex.PW12/2 was executed by Ram Sarup alone on 10.02.1941. Another rent note Ex.PW3/1 was executed by Prabhu Dayal and Kanhiya Lal sons of Chhutan on 31.03.1944. Thereafter, another rent note Ex.PW4/2 was executed by Kanhiya Lal alone on 05.09.1945. One more rent note Ex.PW12/1 was executed by Kanhiya Lal alone on 07.03.1952. Plaintiff had filed an ejectment petition against the defendants, Kanhiya Lal and another person Piare Lal from the property in question. In the said rent petition, Kanhiya Lal who was executant of latest rent note was described as main tenant and other defendants including Piare Lal were shown to be sub tenants in the property. Said rent petition was allowed and ejectment was ordered by the Rent Controller, Gurgaon on 06.12.1968. However, the Lower Appellate Court upheld the ejectment only qua Kanhiya Lal by order dated 05.01.1973, whereas ejectment qua others was declined as the alleged sub tenancy was not proved.

[4]. Thereafter, question as to from which portion Kanhiya Lal was to be ejected was left to be decided by the executing

Court. Executing Court ultimately held that Kanhiya Lal was in exclusive possession of the property shown by green colour in the site plan Ex.PW11/1 and the said property was marked by letters K1, K2 and K3. Kanhiya Lal surrendered possession of said portion to the plaintiff. Piare Lal was sister's husband of Kanhiya Lal i.e. son-in-law of Chhutan. The tenancy of Chhutan had commenced prior to the year 1936 and rent note was executed on 11.12.1936 Ex.PW4/1, which was executed by Chhutan and Ram Sarup. Defendants were born in this property and they lived in this property as licencees under Chhutan being the family members. When Chhutan became old, he got the tenancy changed in favour of his eldest son Ram Sarup. Other sons of Chhutan along with other family members resided in the house as licencees being family members under that tenant. However, Ram Sarup died and thereafter, rent note was executed by Prabhu Dayal and Kanhiya Lal Ex.PW3/1 jointly, who were major sons of Chhutan. Thereafter, Prabhu Dayal did not execute the rent note himself but got the same executed from Kanhiya Lal his younger brother and the family members resided with him as licencees being members of the same family. Joint Hindu family of Chhutan disrupted and Kanhiya Lal and the defendants separated from each other and came to occupy the separate portion in the property in question. Property

marked by letters Y1, Y2, Y3 and Y4 came to be occupied by Yad Ram. Property marked by letters T1, T2 came to be occupied by Thaker. Property marked by letters P1, P2, P3 and P4 came to be occupied by Piare Lal and the property marked by letters K1, K2, K3 came to be occupied by Kanhiya Lal. Sehan and Rasta which was not by any colour in the site plan Ex.PW11/1 remained common between them.

[5]. It is further alleged that order of ejectment was passed against Kanhiya Lal alone on 26.03.1980 and he vacated the portion marked by letters K1, K2 and K3. Yad Ram, Thaker and Piare Lal continued in the remaining portion of the property under dispute. Plaintiff alleged that the status of the defendants was that of licensees and previous stand taken away in the rent petition showing them to be sub tenants was erroneous. With this background, suit for possession came to be filed.

[6]. Suit was contested by the defendants on all counts. They set up a plea of adverse possession as their possession was for more than 40 years. Defendants alleged that rent note was executed by Kanhiya Lal on 07.03.1952 Ex.PW12/1 which was got executed by fraud as Kanhiya Lal used to sit as a Tailor on the shop of Ganga Saran Dilwal, who managed to obtain the thumb impressions of Kanhiya Lal on the said rent note. They further claimed that Chuttan or Ram Sarup had not executed

any rent note. Defendants alleged that since Kanhiya Lal alone had executed a rent note, therefore, it was apparent that the defendants never acknowledged themselves to be tenants upon the property.

[7]. It was further alleged that the plaintiff himself had shown them sub tenants in the earlier petition under the Rent Act, which was dismissed qua the defendants upto the High Court. Now the plaintiff could not show the possession of the defendants as permissive possession, rather their possession was adverse, hostile and ripened in the full ownership. Defendants have already raised various constructions over the property in question. Even the executants of rent notes never considered them in the capacity of permissive occupants nor they were lincecees under them. There was no joint Hindu family of the defendants and they carried out their different vocations and were in separate possession of the property in question.

[8]. After completion of the pleadings of the parties, both the parties went to trial on the following issues:-

“1. Whether the plaintiff is owner of the suit property? OPP

2. What is the effect of litigation stated in para No.3, 4 and 5 of the plaint qua this litigation? OPParties.

3. Whether defendants are owners by adverse possession of the property in question? OPD

4. Whether the suit is barred by time? OPD

5. Whether the suit is not correctly valued for the purposes of Court fee and jurisdiction? OPD

5 A Whether Gansham and Surya Kumar have locus standi to file the present suit? OPD

Additional issue No.1 was framed on 30.05.1986.

6. Whether the defendants have been residing as licensees under the tenants as alleged, if so, its effect? OPP

6. Relief.”

[9]. Both the parties led their respective evidence on the aforesaid issues. After appraisal of evidence, trial Court decreed the suit vide judgment and decree dated 14.10.1987 and the defendants remained unsuccessful in the first appeal as well before the Lower Appellate Court, who dismissed the same vide judgment and decree dated 27.02.1990.

[10]. Learned counsel for the appellants has framed the following substantial questions of law in the present appeal:-

“1. Whether the Courts below have gravely erred by holding that the defendant-appellants had not become owners on the basis of adverse possession?

2. Whether the Courts below could have held the defendant-appellants to be licencees

despite no evidence having been led to prove the said fact?

3. Whether the Courts below could have held the defendant-appellants to be licensees despite the glaring admission in the ejectment proceedings that they were sub-tenants? Whether the Courts below could have sustained the contrary stands of the plaintiff-respondents?

4. Whether the Courts below could have held, in light of the latest law, that the plea of adverse possession amounts to admission of the ownership of the plaintiff-respondents?

5. Whether the judgments and decrees of the Courts below are perverse and liable to be reversed?"

[11]. I have heard learned counsel for the parties and also perused the record with their able assistance.

[12]. Learned counsel for the appellants refers to earlier rent petition filed by the plaintiff against Kanhiya Lal, Piare Lal, Thaker and Yad Ram under Section 13 of Punjab Rent Restrictions Act. In the said petition, the Rent Controller vide order dated 06.12.1968 held that the premises in question was taken on rent by Chhutan and Ram Sarup in December, 1936. There was unrebutted statement of Piare Lal, according to which respondents had paid house tax and property tax in respect of the premises since the year 1962. The living of the

respondents in the premises since generations was also not denied but the said fact was not construed to be sufficient to make them owner of the property. The contention of the respondents that the relationship of landlord and tenant did not exist was denied. Comparison of the rent deed, corresponded with each other and it was held that respondents No.2 to 5 in the said petition were not bound by the act of respondent No.1 i.e. Kanhiya Lal. Respondents No.2 to 5 were in close relationship of respondent No.1. Respondents No.1 to 4 had common ancestor i.e. Chhutan who had executed rent deed. Therefore, the Rent Controller observed that the respondents were living in the same premises, though respondent No.1 had executed the rent note in the year 1952. Issue No.2 as framed in the context of relationship of landlord and tenant whether existed between the petitioner and respondent No.1 was accordingly decided in favour of the plaintiff.

[13]. Learned counsel for the appellants highlighted the pleadings as made in the ejectment petition wherein it was mentioned that respondent No.1 had done subletting of the house in favour of respondents No.2 to 5 without the consent of the landlord-plaintiff. Ground of non-payment of rent was alleged against respondent No.1 Kanhiya Lal. Allegation of change of user was also made.

[14]. Perusal of site plan Ex.PW11/1 depicted the entire property in different colours viz-a-viz earmarked portions in the form of Y1, Y2, Y3, Y4, T1, T2, P1, P2, P3, P4 and K1, K2, K3 of the aforesaid properties which were in compact block and were totally incorporated within the boundaries of A,B,C,D,E,F,G. Learned counsel contended that as per written statement filed in the earlier petition before the Rent Controller, the present appellants took the stand that even, if, it was presumed that all the respondents were tenants, still the ejectment petition was not maintainable as the tenancy was never terminated in accordance with law. In reply to para No.2, it was contended that the respondents therein were not the tenants as alleged in the petition, nor rent note was executed on 07.03.1952 by the respondents, nor they admitted the plaintiff to be their landlord. Respondents were born in the premises and their fathers were living in the premises as owners. They claimed that the property standing at the site belonged to them. The allegation of subletting was denied altogether.

[15]. The Appellate Court in Civil Appeal No.12 of 08.01.1969 held that the findings of the Rent Controller were not sustainable other than Kanhiya Lal and accordingly the findings were reversed, thereby holding that Rent Controller had no jurisdiction to order ejectment of the present appellants being

respondents therein because there was no evidence to hold that they were sub tenants of Kanhiya Lal or that they were holding the demised premises on behalf of Kanhiya Lal. According to the learned counsel, the said judgment dated 05.01.1973 passed by the Appellate Authority, Gurgaon attained finality.

[16]. Learned counsel further contended that the ownership of the plaintiff was the conceded position before the Courts below but the defendants/appellants set up plea of adverse possession in the written statement.

[17]. A mere possession or permissive possession does not demonstrate spectrum of adverse possession. For claiming adverse possession, the defendants must prove that their possession, is “*nec vi, nec clam, nec precario*”, i.e. peaceful, open and continuous. The possession should be actual, open, notorious, exclusive and continuous for the required time as provided in law. The necessary ingredients of adverse possession as enumerated in **2004 (2) RCR (Civil) 702** tilted as ***Karnataka Board Wakf Vs. Government of India*** are that the adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. A party claiming adverse possession must prove that his possession is “*nec vi, nec clam, nec precario*” i.e. peaceful, open and continuous and it should be adequate in continuity, in publicity

and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the original owner and is actual, visible, exclusive, hostile and continued over the statutory period.

[18]. Plea of adverse possession is not a pure question of law, rather it is a mixed question of law and facts. A person who claims adverse possession, must show; (a) On what date, he came into possession; (b) What was the nature of his possession; (c) Whether the factum of possession was known to other party (d) How long his possession had continued; (e) His possession was open and undisturbed .

[19]. Plea of adverse possession has no equities rather this right has some instinct of piratical rights. The person has to plead from what date his possession became adverse, and he must disclose the necessary ingredients in his pleadings. The written statement filed by respondents is totally silent in the context of date, nature of possession, factum of possession, how long they remain in possession and that their possession was open and undisputed. There is no foundation on the aspect of adverse possession pleaded by the defendants in their written statement, therefore, the plea having been taken for the first time in arguments cannot be termed as a legal plea which can be raised at any stage. As earlier mentioned that plea of

adverse possession is a mixed question of law and facts and therefore, it cannot be held to be a pure question of law.

[20]. Even as per the evidence of the defendants on record, factum of ownership of plaintiff was an admitted fact. Reference was made to the testimonies of Mohammad Hassan (DW2), Harish Chand, Clerk M.C. (DW3), and Gopal Dass (DW4), who had admitted that the plaintiff was owner of the property. Even, Piare Lal (DW1) and his brother Kanhiya Lal (DW6) could not deny the title of the property in favour of the plaintiff. The defendants only asserted adverse possession for which aforesaid conditions were required to be satisfied.

[21]. The question which posed before the Court for consideration was whether tenancy was created by Kanhiya Lal alone in the year 1952 or there was earlier tenancy created on 11.12.1936 Ex.PW4/1 by Chhutan and Ram Sarup. Apparently, number of tenancies were created, prior to tenancy created by Kanhiya Lal in the year 1952. The plaintiff has specifically pleaded in para No.2 of the plaint that Chhutan and Ram Sarup were the tenants of the plaintiff and they executed rent note on 11.12.1936 Ex.PW4/1. Tenancy continued and rent notes were executed by one son over the other son of Chhutan deceased and lastly, rent note was executed by Kanhiya Lal deceased on 07.03.1952 in favour of the plaintiff. Thereafter, in para No.3 of

the plaint the reference was made to earlier ejectment petition and decision rendered by the authorities under the Act. In para No.5-D of the plaint pleadings were made with reference to commencement of tenancy w.e.f 11.12.1936 and rent deed executed by Chhutan and Ram Sarup. Defendants were born in the disputed property and they remained in occupation as licencees under the tenants as well as family members.

[22]. The capacity and the nature of possession of the defendants was the core issue in the present litigation before the Courts below. Plaintiff has been able to prove various rent notes on record. Rent note Ex.PW4/1 dated 11.12.1936 was executed by Chhutan and Ram Sarup in respect of entire property as well as the property shown in green colour. Ram Sarup was eldest son of Chhutan. He pre-deceased Chhutan by few days. Second rent note Ex.PW12/2 was executed on 10.02.1941 by Kanhiya Lal alone. Third rent note Ex.PW3/1 was executed on 31.03.1944 by Prabhu Dayal and Kanhiya Lal, both sons of Chhutan jointly. Prabhu Dayal was father of defendant No.1 and Chhutan was father of defendants No.2 and 3. Thereafter, rent note was executed on 05.09.1945 i.e. Ex.PW4/2. This rent note was executed by Kanhiya Lal alone and thereafter, last rent note was executed on 07.03.1952 i.e. Ex.PW12/1 by Kanhiya Lal alone. All these rent notes were

executed regarding the entire property shown in the site plan Ex.PW11/1. The execution of these rent notes was proved by the evidence of the plaintiff and was not even disputed before the Courts below. DW6-Kanhiya Lal, of course, stated that his signatures were obtained by fraud but he stated so about one rent note only. There were three rent notes executed by him. Even otherwise, tenancy of Kanhiya Lal was proved in the ejectment petition. The decision rendered by the authorities under Rent Act regarding the tenancy of Kanhiya Lal was upheld and was proved. Rent Controller ordered ejectment of Kanhiya Lal as well as other defendants from the entire property but the said judgment was reversed by the Appellate Authority and eviction of Kanhiya Lal was made whereas qua others, it was rejected. In execution, possession of green portion was taken from Kanhiya Lal on 26.03.1980 as per report of Bailiff Ex.PW9/1.

[23]. With these overwhelming evidence, it was emerged on record that the last tenant should be evicted, whereas defendants who were brothers and nephew of the last tenant were occupying the disputed property and they have no right to stay in the disputed property. Plea of adverse possession as taken by the defendants could not be established as per requirement shown in preceding paras. Tenancy of Chhutan

started in the year 1936. He was predecessor-in-interest of the defendants being father and grand father of the defendants. The said tenancy was in respect of entire property. The said fact was established by rent note Ex.PW4/1 dated 11.12.1936. Factum of taking birth by the defendants in the house was an admitted fact by the defendants. In the year 1936, defendants were either born or they were mere children. They started living in the premises with Chhutan during his tenancy. Thereafter, various rent notes were executed by Chhutan and his sons. The plea taken in rent petition cannot operate as res judicata. It was not a case of execution of fresh tenancy. Since, possession was never surrendered pursuant to creation of original tenancy, therefore, tenancy was continued by holding irrespective of the fact that some rent notes were also executed after definite intervals. The fresh rent notes were not executed immediately on expiry of tenancy period of previous rent notes, therefore, the tenancy which was commenced during the lifetime of Chhutan remained in operation and thereafter, different sons jointly and individually kept on endorsing and executing the tenancy. Therefore, possession of the defendants remained permissive under the tenant. Kanhiya Lal was ejected in the year 1980, therefore the possession of the defendants continued to be permissive possession in the capacity of licencees under the

tenants. They cannot claim ownership by adverse possession.

[24]. The statement of Ghansham Dass, PW 1 in cross examination in the context of asking the defendants to execute rent notes and their denial thereof on the pretext that the mother would not get rent notes from Chhutan and therefore, repudiation of plaintiff's title in the year 1954 was the plea to be debated and claim of the defendants on the basis of adverse possession was established as the suit was filed only on 15.04.1980.

[25]. Evidently, Ghansham Dass did not state that defendants refused to execute rent notes in the year 1952, but he stated that defendants were residing in the disputed property when rent note was obtained from Kanhiya Lal in the year 1952. Ghansham Dass never stated that defendants had also been asked to execute rent note at that very time. Refusal to execute rent note cannot be presumed in the year 1952, even otherwise by mere refusal to execute rent note cannot be taken to be an assertion of title based on adverse possession, presuming hostile title against the plaintiff. Defendants might have refused to execute rent note as Kanhiya Lal had executed the rent note in respect of entire property and the defendants might be asserted their possession under the same tenancy or licencees under tenant Kanhiya Lal. Mere refusal to execute rent note was

not sufficient to assert hostile title or adverse possession by the defendants.

[26]. Even otherwise, ingredients of adverse possession supporting the parameters as laid down in the maxim of '*nec vi, nec clam, nec precario*' as highlighted in preceding paras have not been satisfied in the instant case. The adverse possession of the defendants started after eviction of Kanhiya Lal. He was evicted on 26.03.1980. No limitation could be attracted and defendants could not project themselves becoming owner by adverse possession. In any case before eviction of Kanhiya Lal, plaintiff could not seek possession from defendants because tenancy of Kanhiya Lal extended over the disputed property also. Limitation could not be pressed into service. Even otherwise, possession could not be adverted to a person who had no immediate right to possession.

[27]. Having considered the plea raised by the learned counsel for the appellants on the basis of aforesaid discussion, I found that plea of adverse possession could not be established by the appellants. Questions No.1 and 4 stand decided in the light of aforesaid observations. Plea of licensee was lawfully raised. Defendants took birth in the premises. Initially, rent deed was executed by Chhutan and Ram Sarup in the year 1936, thereafter number of rent deeds were executed by the sons

jointly and individually. The stand taken in the rent petition strictly could not be applied in a regular suit. Preponderance of evidence was sufficient to hold that the defendants were licencees in the premises in question. The execution of all the rent notes were established on record. The plea of fraud as alleged by the defendant Kanhiya Lal Could not established on record. Therefore, questions No.2 and 3 had to be answered in the manner as held by the Lower Appellate Court. The judgments and decrees passed by the Courts below cannot be held to be perverse on account of misreading of evidence on record.

[28]. Having considered the controversy, this Court does not find any patent error of law or jurisdiction in the impugned judgments and decrees passed by the Courts below thereby warranting any interference in regular second appeal. Hence, the appeal is found to be totally bereft of merit and the same is dismissed.

17.05.2016

Prince

**(RAJ MOHAN SINGH)
JUDGE**