

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

**Regular Second Appeal No.3036 of 2008 (O&M)
Date of Decision: July 13, 2016.**

Shanti Devi and another

.....APPELLANT(s).

VERSUS

Sita Devi and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. O.P. Goyal, Senior Advocate with
Mr. Mukesh Verma, Advocate
for the appellant (s).

Mr. Vikas Mohan Gupta, Advocate
for the respondents.

SURINDER GUPTA, J.

This is appeal against the judgment and decree passed by learned Additional District Judge, Patiala, whereby appeal filed by appellants-plaintiffs Shanti Devi and Ram Lal against the judgment and decree passed by learned Additional Civil Judge (Senior Division), Patiala declaring the plaintiffs as owners in possession of the disputed house and restraining the respondents-defendants from interfering in their peaceful possession, in any manner, was set aside and the suit of the plaintiffs was ordered to be dismissed with costs.

2. Case of the plaintiffs, in brief, is that they are in peaceful, continuous, hostile and adverse possession over the suit property for the last more than 60/65 years. Earlier, the husband and father-in-law of plaintiff No.1 and his forefathers were in possession, without any payment to the

defendants or any other person. Plaintiffs also made additions, alterations and renovations in the house in dispute by spending huge amount. The defendants/their relatives never spent any penny on the house in dispute or ever came in possession of the same. Being in continuous, peaceful, hostile and adverse possession for a period of more than 12 years, plaintiffs have attained title over the suit property. The defendants, who were influential, powerful and intelligent persons, taking undue advantage of their position, tried to dispossess the plaintiffs from the suit property.

3. The possession of the plaintiffs over the suit property was admitted even in the earlier suit filed by defendant No.1, though she had alleged possession of the plaintiffs as tenant. There is no ejectment order from any competent Court of law in favour of defendants and against the plaintiffs. Even no ejectment petition or suit for possession was pending regarding the suit property.

4. The defendants contested the claim of the plaintiffs in the written statement, inter-alia, pleading that the plaintiffs are tenants of defendants @ ₹300/- per month for the last about 11/12 years. They have not paid the rent for four years prior to filing of the suit. The property number of the dispute house is 3875 and not 3874. In the earlier suit for possession filed by defendant No.1, the house number of the disputed property was mentioned as 3874 by typographical mistake. The typographical mistake in the earlier suit was corrected by the defendants. The plaintiffs are claiming title over the suit property but are not aware of its number. All other averments that plaintiffs have become owners of the suit property by way of adverse possession were controverted and denied.

5. Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the plaintiffs are entitled to declaration that the plaintiffs are exclusive owners and in possession of house as mentioned in the head note of the plaint? OPP
- (2) Whether the plaintiffs are entitled to permanent injunction restraining the defendants to dispossess the plaintiffs from the suit property? OPP
- (3) Whether the suit is not maintainable in the present form? OPD
- (4) Relief.

6. Learned Additional Civil Judge (Senior Division), Patiala held that in the absence of any rent note or evidence regarding the tenancy of the plaintiffs and due to their continuous long possession, they have attained title over the suit property by way of adverse possession. On appeal, learned Additional District Judge, Patiala reversed the findings recorded by learned Civil Judge with observations in para 18 as follows:-

“18. From the evidence produced on file by the defendants, it is proved that in the municipal record, Sham Lal husband of Sita Devi, appellant/defendant, has been mentioned as owner of the suit property and from the evidence on file, it is not proved that the plaintiffs have become owner of the suit property by adverse possession. In view of the authority referred above, suit for declaration of ownership on the basis of adverse possession is also not maintainable. So, the findings of trial court on issue No.1 are not sustainable and are liable to be set aside. The plaintiffs are also not entitled to the injunction as prayed for. So, in view of above discussion, the findings of trial court on issues No.1 and 2 are reversed.”

I have heard learned counsel for the parties and have gone

through the paper book and record of the Courts below with their assistance.

8. At the very outset, both the counsel for the parties admit that appellants-plaintiffs are in possession of the suit property and consequently entitled for the relief of permanent injunction to restrain the defendants from dispossessing them except in due course of law. In view of above submissions of learned counsel for parties, the judgment of Courts below can be modified to above extent, without framing any substantial question of law.

9. The plea raised by the appellants-plaintiffs that they have become owners of suit property by way of adverse possession, has not been pressed by learned counsel for the appellants in this appeal. The only point on which detailed arguments were addressed by learned counsel for the appellants are that the number of disputed property is 3874 and not 3875 and in support of his contention, he has referred to the admission by the respondents-defendants in their earlier suit where the property number was mentioned as 3874. Learned counsel for the appellants seeks a specific finding to the effect that plaintiffs are in possession of the part of property No.3874 and not 3875 as alleged by the respondents-defendants.

10. Learned counsel for the respondents has argued that the dispute regarding the property number has been raised without any basis. Respondent Sita Devi mentioned the number of suit property in the earlier litigation by typographical mistake as 3874 but the same was got rectified. Even otherwise, it is proved on record that house bearing No.3874-D is owned by Bachni Devi and it comprised of one store, one godown, two big sheds and two rooms. The property bearing entry no.3874 was owned by

Sarup Chand and was having no tenant. Even otherwise, plaintiffs have nowhere described the suit property as property No.3874 but has described the same with boundaries only. This was a deliberate act on the part of appellants-plaintiffs as they were well aware of the fact that property in their possession was part of property No.3875.

11. On giving a careful thought, I find merits in the submissions of learned counsel for the respondents for the reasons as follows:-

(i) Plaintiffs have not mentioned the property number regarding which they have filed the suit anywhere in the plaint or even in the headnote of the plaint. Headnote of the plaint of the suit filed by the appellants reads as follows:-

“Suit for declaration to the effect that the plaintiffs are the exclusive owners in possession of the House consisting of two rooms, tin shed, which is shown in red colour in the site plan Annexure-A situated on Shahi Samadhan Road, Patiala and that the defendants have got no right, title or concern, in any manner, with the same which is bounded as follows:-

East	:	House of defendants;
West	:	Main Road;
North	:	House of defendants;
South	:	Joint street.

And Suit for Permanent Injunction restraining the defendants, their servants, agents, partymen, attorney to dispossess the plaintiffs with force, in any manner, whatsoever or to interfere in their peaceful possession by demolishing the construction with force of (or) any part of the property which is shown in red colour in the site plan Annexure-A situated at Shahi Samadhan Road, Patiala, which is bounded as under:-

East	:	House of defendants;
West	:	Main Road;
North	:	House of defendants;
South	:	Street.”

(ii) The site plan Ex.P1 produced on record by the appellants also do not give number to the suit property as 3874 and it describes the suit property as B-16/200 but again in the plaint, this number of the property do not find mention.

(iii) The appellant had described the suit property with the boundaries as follows:-

East	:	House of defendants;
West	:	Main Road;
North	:	House of defendants;
South	:	Street.

In the site plan Ex.P1 filed by the appellants-plaintiffs, the boundaries of the suit property are mentioned as follows:-

East :	House of Madan Lal s/o Lalu Ram (name of husband of plaintiff was Dayal Chand)
West :	Road;
North :	House of Mansa Devi-tenant (Sita Devi owner);
South :	House of Gopal.

A common passage has been shown in between the kitchen, bathroom and room in occupation of the plaintiffs. If the site as described in the head note of the plaint is taken as correct, in that case, kitchen, bathroom and open area are outside the disputed site. The voter list (Ex.P2) and none of the other documents placed on record prove that the suit property is bearing house No.3874.

(iv) Admittedly, in the suit filed by Sita Devi respondent-defendant No.1, the property in possession of appellants-plaintiffs was mentioned as

bearing number 3874 but the plaintiffs have categorically pleaded and proved that it was a typographical mistake. The property bearing No.3874 is owned by Sarup Chand and not by the plaintiffs. Even otherwise, there could not be any reason for the respondents to give a wrong number of the suit property.

(v) On the other hand, defendants have proved on record that Sham Lal was owner of property no.3875. The appellants are claiming adverse possession over the suit property and impliedly admitting respondents-defendants, who are legal heirs of Sham Lal as its owners.

(vi) While appearing as DW1 respondent Sita Devi has specifically stated about controversy about the number of the suit property in para 5 and 6 of her affidavit Ex.D1 as follows:-

“5. I state on oath that about 4 years back, the plaintiffs tried to make additions or alterations and as such, the defendants were compelled to file a suit for permanent injunction. By typographical mistake, the No.of the said house in that suit was typed as 3874 and the plaintiffs took it the same as 3874. There is no question of ownership of the plaintiffs, as they even do not know the No.of the property, as the same is 3875 and not 3874. The typographical mistake of No.3874 in the previous suit has been taken to be correct by the plaintiffs.

6. I state on oath that Sh.Sham Lal has been shown as the owner of the House no.3875 of which premises in dispute are a part in the Municipal record and he is the owner of the same. House no.3875 is a big building owned by Sh. Sham Lal and the defendants alongwith others are legal heirs of Sham Lal.”
(reproduced as it is from affidavit Ex.D1).

No suggestion was given to respondent-defendant No.1 that number of the suit property is 3874 and not 3875 as stated by her in her affidavit.

(vii) Plaintiff Shanti Devi while appearing as PW6 has stated that she was not aware if the house No.3874 in the plaint has been wrongly mentioned. She further stated that she was not having any document of title over the suit property. She has tried to project the house number of the disputed house as B-16/200 but failed to connect this house with its old number.

12. The fact that the plaintiffs deliberately avoided to describe the property number of the disputed house in the plaint and have failed to produce any document to show that its number 3874 is sufficient to repel the contention of learned counsel for the appellants that the number of the suit property is 3874. On the basis of evidence on record, it is proved that the number of the suit property is 3875 and not 3874. The finding of fact recorded by the first Appellate Court that Sham Lal is proved to be owner of suit property call for no interference.

13. As a sequel of my above discussion, this appeal is partly accepted and the suit of the appellants-plaintiffs is partly decreed for permanent injunction restraining the respondents-defendants from interfering in the possession of plaintiffs over the suit property except in due course of law. In view of the facts and circumstances, parties are left to bear their own costs.

July 13, 2016
Sachin M.

(SURINDER GUPTA)
JUDGE