

Regular Second Appeal No.3963 of 2008 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: August 03, 2016

1. R.S.A.No.3963 of 2008 (O&M)

Municipal Committee, Ratia, District Fatehabad

...Appellant

Versus

Gurmeet Singh

...Respondent

2. R.S.A.No.295 of 2009 (O&M)

Municipal Committee, Ratia, District Fatehabad

...Appellant

Versus

Gurmeet Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Jagdish Manchanda, Advocate,
for the appellant in both the appeals.

Mr.Sandeep Khunger, Advocate,
for the respondent in both the appeals.

AMIT RAWAL, J. (Oral)

By this order, I intend to dispose of two Regular Second Appeals bearing No.3963 of 2008 and 295 of 2009 as common question of law and facts are involved in both the appeals. The facts are being

taken from RSA No.3963 of 2008.

Appellant-defendant-Municipal Committee (for short “Committee”) is aggrieved of the judgment and decree rendered by the Lower Appellate Court, whereby the decree of declaration holding the plaintiffs to be owner on the basis of the long and settled possession, much less injunction qua forcible interference and dispossession, has been granted.

Mr.Jagdish Manchanda, learned counsel for the appellant-defendant submits that the plaintiffs had filed a suit for declaration that they are owners in possession of land bearing old khasra No.2751 min measuring 1 bigha 13 biswas, situated at Tohana Road Ratia, Ratia before consolidation from the year 1960-61. He submits that no person can take the plea of adverse possession in affirmative unless and until there is averment qua extinguishment of title as per Section 27 of the Limitation Act. There is no whisper in the suit that the averments are in consonance with the aforementioned provisions of law. Qua locus-standi of the plaintiffs, issue No.3 was framed and the trial Court rendered a finding on the said issue in favour of the plaintiffs though dismissed the suit. As a result thereof, two appeals were filed. The appeal filed by the Municipal Committee, Ratia has been dismissed, whereas the appeal filed by the respondent-plaintiff has been allowed and the suit,

aforementioned, was decreed.

He further submits that in view of **Bhim Singh and others Versus Zile Singh and others, 2006 (3) R.C.R. (Civil) 97**, the declaration qua ownership of the aforementioned land by way of adverse possession cannot be claimed. The plaintiffs have also failed to prove the possession, therefore, the injunction should not also be granted and, thus, prays for formulation of the following substantial questions of law:-

- 1) Whether the respondent-plaintiff can claim the declaration in affirmative by way of adverse possession or not?
- 2) Whether the person, who is in long and settled possession can seek permanent injunction qua the forcible dispossession, except in due course of law?

Mr.Sandeep Khunger, learned counsel for the respondent-plaintiff submits that there is categoric pleading qua the extinguishment of right in Para No.13 of the plaint and this aspect has been examined by the Lower Appellate Court in Para 14 of the judgment. He has also relied upon the judgment of the Hon'ble Supreme Court in **Rame Gowda (D) by Lrs. Versus Mr.Varadappa Naidu (D) by Lrs. and Anr., 2004(1) SCC 769** and, thus, urges that there is no illegality and perversity in the judgment and decree rendered by the Lower Appellate Court.

appraised the paper book.

Before advertng to the rival contentions of the learned counsel for the parties, it would be apt to reproduce Section 27 of the Limitation Act and as well as Para 13 of the plaint, which read thus:-

Section 27

27. Extinguishment of right to property.—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”

Para 13 of the plaint

“That in all circumstances, the right of the defendant to institute proceedings or suit for ejectment of plaintiffs has become time barred and, therefore, their right to the suit property stands extinguished as provided in Section 27 of Limitation Act and, thus, the plaintiffs have become owners in possession of the suit land.”

The language of the aforementioned provisions of law is plain and simple. It clearly lays down that a person would extinguish a right to claim property in case the suit for possession of the same is not within the period of limitation.

On juxtaposition of the aforementioned provisions of law & pleading, the respondent-plaintiff had categorically pleaded regarding the

extinguishment of right of the Municipal Committee, Ratia qua ownership, for, the respondent-plaintiff had earlier instituted a suit against the Committee in the year 1960-61 regarding the injunction and the same was decided on 4.11.1963 vide judgment and decree Ex.P27 and Ex.P28, whereby the status of the respondent-plaintiff was found to be of a trespasser. It is the conceded position on record that till then, the respondent-plaintiff is in continuous possession. It is in this backdrop of the matter, the plea of extinguishment of right had been taken. On the contrary, the Committee has not been able to lead evidence qua the disturbance in the possession and, thus, in my view, there is no force in the plea of Mr.Manchanda qua granting of declaration of adverse possession. I am also supported by the findings rendered by the Hon'ble Supreme Court in **Prem Singh & Ors. Versus Birbal & Ors., 2006 (3) R.C.R. (Civil) 381**, particularly in Paras 11, 12 and 20. The same read thus:-

“11. Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the limitation Act, 1963 which provides that at the determination of the period prescribed thereby, limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

12. An extinction of right, as contemplated by the

provisions of the Limitation Act, prima facie would be attracted in all types of suits. The Schedule appended to the Limitation Act, as prescribed by the Articles, provides that upon lapse of the prescribed period, the institution of a suit will be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out is raised by the defendant or not, in the event a suit is found to be barred by limitation, every suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed.

20. If the plaintiff is in possession of a property, he may file a suit for declaration that the deed is not binding upon him but if he is not in possession thereof, even under a void transaction, the right by way of adverse possession may be claimed. Thus, it is not correct to contend that the provisions of the Limitation Act would have no application at all in the event the transaction is held to be void.”

It is irresistibly concluded that the plea of adverse possession, i.e., extinguishment of right and possession can always be taken in affirmative by taking the aid of provisions of Section 27 of the Limitation Act. Since the respondent-plaintiff had been found in long and settled possession, therefore, he should not have been dispossessed, except in due course of law. In my view, the Lower Appellate Court, after examining the oral and documentary evidence, being the last Court of fact and law, found that both the ingredients have been fulfilled and

resultantly decreed the suit.

For the foregoing reasons, I do not find any illegality and perversity in the findings rendered by the Lower Appellate Court. No ground for interference is made out.

The appeals are dismissed. Judgment and decree of the Lower Appellate Court is affirmed.

August 03 , 2016
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No