

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

**E.S.A No. 50 of 2012 (O&M)
DECIDED ON : 17.05.2016**

Bhag Singh

...Appellant

versus

Mohinder Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. M. K. Singla, Advocate,
for the appellant.

Mr. Amrik Singh, Advocate,
for the respondents.

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

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the concurrent orders of the Courts below dismissing the third party objections filed by the appellant.

Brief facts of the case are that Kartar Singh entered into an agreement to sell the property in dispute in favour of Mohinder Singh on 13.12.1993. On 31.08.1994, the appellant among others filed a suit against Kartar Singh and others claiming a declaration that they have become owner of the property in dispute by way of adverse possession. Even though all the defendants filed written statements denying the claim of the appellant, yet in his cross-examination, Kartar Singh very conveniently accepted their claim

and that suit was decreed on 22.11.1995. Prior to that, on 09.05.1995, respondent Mohinder Singh had filed a suit for specific performance against Kartar Singh in respect of agreement to sell dated 13.12.1993. At one stage, the appellant moved an application in the said suit for impleading him as party but that application was declined. Ultimately the said suit for specific performance was decreed on 04.11.1997. The said judgments and decrees have admittedly become final. Thereafter the respondents filed an application for execution in which the appellant filed third party objections claiming that they had become owners of the suit property in view of the judgment and decree dated 22.11.1995. Both the Courts below noticed that the said suit had been decreed only because Kartar Singh, in his cross-examination, had admitted the claim of appellant and came to the conclusion that it was a collusive suit which had been filed in conjunction with each other only to defeat the rights of Mohinder Singh-the vendee. Consequently, both the Courts below dismissed the objections.

Learned counsel for the petitioner has argued that the Executing Court could not have critically analyzed the judgment and decree dated 22.11.1995 and the only option left before the Executing Court was to either dismiss the execution application or to adjourn the same sine die to enable Mohinder Singh to file a suit challenging that decree and only when that decree was set-aside by regularly instituted suit, the execution could have gone ahead.

The argument though ingenious cannot be allowed to prevail in view of the fact situation which has emerged in this case. The findings of the Courts below that the judgment and decree dated 22.11.1995 was a

collusive decree, cannot be interfered with. The Appellate Court had noticed that not only the entire suit was decreed on the basis of statement of Kartar Singh, the appellant had not even produced the revenue record for 12 years to show that they had been in possession leave alone whether it was adverse or permissive. In ***Gram Panchayat of Village Naulakha Vs. Ujagar Singh, 2000 (4) RCR (Civil) 749*** wherein the Supreme Court held as follows :-

“Thus, in order to contend in a latter suit or proceeding that an earlier judgment was obtained by collusion, it is not necessary to file an independent suit as stated in Jagar Ram's case for a declaraltion as to its collusive nature or for setting it aside, as a condition precedent. In our opinion, the above cases cited in Sarkar's Commentary are correctly decided.”

Moreover, suit for declaration on the basis of adverse possession is not maintainable since adverse possession is a shield not a sword. In this connection in ***Gurudwara Sahib V. Gram Panchayat Village Sirthala and another, 2014 (1) Law Herald (P&H) 193 (SC) 193*** wherein the Supreme Court held as follows :-

“7. In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable. There cannot be any quarrel to this extent the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

In this view of the matter, no ground for interference in the judgments and decrees passed by both the Courts below is made out.

Consequently, the appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

MAY 17, 2016
shalini/pooja sharma-I