

**In the High Court of Punjab and Haryana at Chandigarh**

**RSA No. 1329 of 2011(O&M)**  
**Date of Decision:11.3.2016**

**Arun Kumar and others**

**---Appellants**

**vs.**

**Daulat Ram and others**

**---Respondents**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

**\*\*\***

**Present:** Mr. P.R.Yadav, Advocate  
for the appellants

Mr. J.P.Ahlawat, Advocate  
for Mr. N.D.Achint, Advocate  
for respondents No. 5, 10 and 12

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

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**Rekha Mittal, J.**

The present appeal has been directed against the consistent findings recorded by the courts below whereby suit filed by Laxmi Narain (represented by his legal representatives including the appellants) for permanent injunction was dismissed. The counter claim preferred by the respondents was decreed.

For the sake of convenience, the parties shall be described as plaintiff and defendants.

The plaintiff filed a suit for permanent injunction on the

allegations that he is in cultivating possession of the suit land measuring 6 kanals 3 marlas situated within the revenue estate of village Mujafra Tehsil Pataudi, District Gurgaon since the time of his forefathers for more than 100 years and the defendants have no right, title or interest in the same. The land in dispute was given to ancestors of the plaintiff by forefathers of the defendants who made the same cultivable and no rent was to be paid. There was a contract not to eject forefathers of the plaintiff who had been paying land revenue and had been continuously cultivating the land without any interference. In case the plaintiff and his forefathers are not proved to be tenants, the plaintiff has become owner of the suit land by way of adverse possession.

The defendants filed the written statement, controverted the allegations that land was given to forefathers of the plaintiff for cultivation by predecessors-in-interest of the defendants. They have also denied that the plaintiff has become owner of the suit land on the basis of adverse possession with the plea that the plaintiff cannot be allowed to take advantage of wrong entries. They have also challenged the suit being not maintainable, locus standi to file the suit, suit being bad for misjoinder and non-joinder of parties and the plaintiff being guilty of suppressing the true facts and approaching the court with uncleaned hands.

The defendants filed counter claim with the plea that they are in possession of the land in question and the plaintiff has got no right, title or interest therein and name of the plaintiff in the column of cultivation in the revenue record is illegal and invalid. In the alternative, in case the plaintiff is found in possession or is proved to be in possession, a decree for

possession was prayed for.

The learned trial court bestowed its thoughtful consideration to rival submissions of counsel for the parties in the light of pleadings, issues framed for determination and evidence adduced on record, rejected claim of the plaintiff for grant of injunction but accepted counter claim filed by the defendants and decree for declaration was passed that the defendants and their co-owners are in possession of the suit property and name of the plaintiff in the column of cultivation is liable to be corrected. The judgment and decree passed by the trial court was affirmed in appeal preferred by the plaintiff through his legal representatives.

Still feeling dissatisfied, the present regular second appeal has been preferred by legal representatives of the plaintiff.

Counsel for the plaintiff has submitted that the plaintiff has become owner of the suit land on the basis of adverse possession, therefore, the courts below have committed a serious error rather illegality in rejecting his claim for grant of permanent injunction against forcible interference in possession of the suit land. For this purpose, he has invited attention of the Court to the entries in the jamabandi for the year 1968-69 wherein in column No. 5, Ghanshyam son of Hira Singh son of Jai Ram is recorded to be in possession as *gair marusi* and in column No. 9, there is an entry of '*bila lagan bavajah kabza mukhalfana*'. A similar entry was made in column No. 9 of the jamabandis for the years 1973-74, 1978-79, 1983-84, 1988-89 1993-94 and 1998-99, though in these jamabandis, name of plaintiff Laxmi Narain has been incorporated in the column of cultivation.

Counsel for the defendants, on the contrary, has supported the

judgments passed by the courts below with the submissions that no substantial question of law arises in the circumstances of the case, therefore, regular second appeal is not maintainable. It is further argued that plea of the plaintiff in regard to permissive and adverse possession is self-contradictory and self destructive, therefore, the plaintiff can neither be heard to say that he has become owner of the suit land by way of adverse possession nor otherwise is entitled to get injunction. There is no challenge to the findings of the courts that the plaintiff has failed to establish his plea that tenancy was created in favour of forefathers of the plaintiff by the predecessors-in-interest of the defendants. Even otherwise, the entries in the revenue record in regard to possession as *gair marusi* and *kabja mukhalfana* run counter to plea of the plaintiff that he is a tenant in the suit land and, therefore, cannot be ejected except by taking recourse to appropriate proceedings for eviction of a tenant. The last submission made by counsel is that consistent findings recorded by the courts below that the defendants are the co-owners in possession of the suit land and the revenue entries depicting possession of the plaintiff are incorrect, liable to be affirmed.

I have heard counsel for the parties, perused the paper book and record of the trial court.

The plaintiff raised inconsistent and self-destructive plea by alleging himself to be a tenant in the suit land and then claiming ownership on the basis of adverse possession. Counsel for the plaintiff is not in a position to successfully assail the findings of the courts below that he has failed to adduced satisfactory much less cogent and convincing evidence to

prove himself to be a tenant in the land in question. The entries in the revenue record relied upon by the plaintiff runs contrary to his plea of being in permissive possession much less a tenant in the suit land. In this view of the matter, I do not find any error much less illegality in the concurrent findings recorded by the courts below that the plaintiff has failed to establish his plea of being in permissive possession of the suit land.

So far as the plea of the plaintiff in regard to his having acquired ownership of suit land on the basis of adverse possession, the plea of ownership on the basis of adverse possession is not available to a plaintiff being a plea available in defence. In this context, reference can be made judgment of the Hon'ble Supreme Court *Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and another 2013 (4) RCR (C) 703*. Even otherwise, once the plaintiff has taken the plea of permissive possession, it was incumbent upon the plaintiff to specifically plead as to since when the said permissive possession was converted into that of adverse possession. The Hon'ble Supreme Court in *Hemaji Waghaji Jat vs. Bhikhabhai Khengarbhai Harijan and others 2008(4) RCR(Civil)401* has summed up that a party claiming adverse possession must prove that his possession is peaceful, open, adequate in continuity and must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. There must be evidence when the possession became adverse so that the starting point of limitation against the party got affected can be found. A person who claims adverse possession should 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 the other party, (d) how long his possession has continued and (e) his possession was open and undisturbed. It has been further held that in terms of Article 65, the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession became adverse. In the case at hand, there is no such plea raised by the plaintiff as to when his permissive possession became adverse qua the true owner. Even otherwise, counsel for the appellants has not made any submissions that the findings recorded by the courts below rejecting his plea of being in possession are the result of misconstruction of evidence or based on no evidence in order to contend that the judgments suffer from perversity much less raising a substantial question of law. Analyzed from any angle, I do not find any error much less illegality in the findings rejecting claim of the plaintiff throughout.

For the reasons aforesaid, finding no merit, the appeal is dismissed. No order as to costs.

**(Rekha Mittal)**  
**Judge**

**11.3.2016**  
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