

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.974 of 2010

Date of Decision: 20.12.2016

Mangat Rai

... Appellant

Vs.

Om Parkash and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. V.K.Kaushal, Advocate,
for the appellant.

Mr. Sanjay Majithia, Senior Advocate, with
Mr. Inderjeet Singh, Advocate,
for the respondents.

Amol Rattan Singh, J.

This is the defendants' second appeal, after the suit filed by the respondents-plaintiffs was decreed in their favour and the first appeal filed by the present appellant-defendant was dismissed by the learned Additional District Judge, Faridkot.

The plaintiffs had sought a declaration to the effect that they are owners of the suit property and possession thereof be handed over to them by the defendant, upon a decree of mandatory injunction being issued to him in that regard by the Court.

2. As per the stand of the respondents-plaintiffs, in the plaint filed by them, the father of respondent-plaintiff No.1 (grand-father of plaintiff No.2) was one Jhanda Ram, a migrant from Pakistan in 1947, who was

allotted the suit property, which is a building bearing no.B-III 182, Faridkot, in the year 1955, by the Custodian of evacuee property, though the conveyance deed was issued only on 26.05.1976, which was registered on 25.08.1976 and a mutation to that effect was incorporated in the record of the Municipal Committee, Faridkot.

Jhanda Ram and his wife both having died, the plaintiffs shifted out of Faridkot, for their business at different places. It was averred in the plaint that they were having good relations with one (late) Vas Dev Vaid, who was their relative, whom the defendant approached for the use of the property as a godown, and was put in possession of the property, with the consent of the plaintiffs, which was a wholly permissive possession, with an assurance by the defendant that he would hand over the property to the plaintiffs as and when they demanded vacant possession thereof.

The appellant-defendant, Mangat Rai, was also stated to be a migrant from Pakistan. However, upon him having refused to vacate the property, about a month prior to the filing of the suit, it was instituted on 09.11.2005.

3. Upon notice issued to him, the appellant-defendant filed his written statement, denying that Jhanda Ram was the owner of the suit property, further doubting the relationship of the plaintiffs with Jhanda Ram. He also denied that the property was allotted to Jhanda Ram in 1955, or that Jhanda Ram was a migrant from Pakistan. The issuance of the conveyance deed on 26.05.1976 and its registration on 25.08.1976 were also denied, further alleging that the conveyance deed, if any, was a forged and fabricated document, not relating to the suit property at all.

The defendant further denied that he was settled in the suit

property by Vas Dev Vaid, or that it was permissive possession, as Jhanda Ram and Vas Dev Vaid had no right or interest in it, Jhanda Ram in any case never having been in possession of the property.

It was also further alleged that the suit property was in possession of the defendant for long and the electricity connection was also obtained by him as far back as on 31.05.1972. Thus, “as per the Government Notification”, he was entitled to get proprietary rights on account of his long possession.

Yet further, it was contended that he had applied to the Tehsildar (Sales), who had transferred the property in his name in the year 1996, on account of his long and continuous possession thereof, after the Tehsildar had made enquiries about such possession. It was stated that he was allowed to purchase the property, after a public notice was issued.

A sale certificate was also issued in his favour by the Tehsildar, on 17.04.1997.

Still further, it was averred that the defendant was regularly recorded as the owner in possession of the property in the house tax assessment register (of the Municipality).

He was using the property as a store/godown for business and had rented it out to the partnership firm M/s Mangat Rai Vijay Kumar, “consisting of the answering respondents Vanit Kumar and Ramesh Kumar as partners”. It was further contended that the partnership firm was a necessary party which had not been impleaded and consequently, the suit was bad for non-joinder.

Lastly, on merits, it was contended that though Jhanda Ram did not have any right or interest in the suit property, however, even so, the

answering defendant had become the owner of the suit property on account of his exclusive peaceful possession thereof, continuous and hostile, over a period of more than 35 years. As such, he had acquired a proprietary right by way of adverse possession and the rights and interests of Jhanda Ram and the plaintiffs, if any, stood extinguished.

However, it was also contended that the plea of adverse possession was only being taken as an alternative plea which would not amount to acquiescence to the claim of the plaintiffs, as otherwise also, the defendant was a bonafide purchaser of the property for valuable consideration, without notice of defect in the title of his vendor, and as such, he was protected by Section 41 of the Transfer of Property Act.

4. Other than the above, objections with regard to lack of cause of action, lack of any site plan of the suit property etc. were also taken, in addition to the fact that the market value of the suit property being more than Rs.5,00,000/-, *ad-valorem* Court fee had not been paid by the plaintiffs.

Hence, dismissal of the suit with special costs was prayed for.

5. Upon a replication having been filed by the plaintiffs, reiterating their stand in the plaint and denying the contents of the written statement, the following issues were framed by the learned Additional Civil Judge (Senior Division), Faridkot:-

- “1. Whether the plaintiff is entitled for declaration and possession, as prayed for? OPP
2. Whether M/s Mangat Rai Vijay Kumar is necessary party to the suit, as alleged? OPD
3. Whether the defendant has become owner by way of adverse possession, as alleged? OPD
4. Whether the defendant is bonafide purchaser, as alleged?

OPD

5. Whether the suit is properly valued for the purpose of court fee and jurisdiction, as alleged? OPD
6. Relief.”

6. The first plaintiff appeared as PW1 and testified in respect of the sale deed dated 26.05.1976, registered on 25.08.1976, Ex.P1, the deed of conveyance dated 26.02.1975, Ex.P2, an order Ex.P-3, dated 15.03.1951 (wrongly typed as 15.3.2007 in the judgment of the Civil Judge and referred to as an order pertaining to the claim of Jhanda Ram in lieu of property left behind in Pakistan), and another order dated 12.04.1974, Ex.P4, which is seen to be an order passed by the Settlement Commissioner, Punjab, Jalandhar, on an appeal filed by the late Om Parkash (respondent-plaintiff no.1) under Section 22 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954.

[By the said order, the order of the Managing Officer (Headquarters) dated 21.02.1974, had been challenged by Om Parkash, directing him to deposit Rs.885/- as balance amount due on the suit property.

The appeal of the respondent was accepted holding that nothing had been shown by the Department, on the basis of which the allottee (Om Parkash) could be asked to deposit Rs.885/-. Hence, the matter was remanded to the Managing Officer, for a fresh decision in the light of what was observed in the order in appeal.]

7. The defendant examined one Harinder Singh as DW1 (a Clerk in the office of the SDO of the Electricity Board), Arun Kumar, Clerk in the office of the Tehsildar as DW2, one Nand Kishore, a Senior Assistant in the

office of the SDM Faridkot, as DW3, Vipin Kumar Tyagi, an Assistant in the Income Tax office as DW5, with the defendant himself stepping into the witness box as DW4.

He relied upon various documents, including a registered deed, Ex.D7, a sale certificate Ex.D8, income tax returns, treasury challans and house tax record, all documents which were Marked as D9 to D20. (It is seen from the record that actually two of these documents were first shown as Exs.D-9 and D-10 but were later shown to be marked as D-9 and D-10; however, the rest of the documents are seen to be exhibits, though Exs D-15 to D-19 are also shown to be marked 'A' to 'E').

8. Upon appraising the evidence, the learned Additional Civil Judge held that the defendant in his written statement had not denied the execution of the sale deed, Ex.P1, in favour of Jhanda Ram, and as such, he had admitted the same. Further, the said document being more than 30 years old, was *per se* admissible in evidence, which otherwise also stood proved by the plaintiffs.

[It needs to be noticed at this stage itself that the finding recorded by the Additional Civil Judge to the effect that the defendant had not denied the execution of the sale deed dated 26.05.1976, has to be seen to be a perverse finding, in view of the fact that it is seen in paragraph 3 of the written statement, that it is stated as follows by the defendant:-

“3. That para no.3 of the plaint is stated is wrong and incorrect, hence denied. It is incorrect that the suit property was allotted to Jhanda Ram in the year 1955. It is further incorrect that Jhanda Ram was migrated from Pakistan. It is incorrect that any conveyance deed dated 26.5.1976 registered on 25.8.1976 was executed qua the suit property. The alleged conveyance deed, if any, is forged and fabricated document and does not relate to the suit property at all.”

However, whether such denial by the defendant would also eventually affect the rights of the plaintiff, is something which would be considered at the time of adjudicating upon the controversy in this judgment.]

Thus, holding that with the title of Jhanda Ram to the suit property established by the sale certificate, thereafter, upon the death of Jhanda Ram and his wife, which again could not be denied by the defendant, the plaintiffs stepped into Jhanda Rams' shoes as his LRs.

(It needs to be noticed here that the Civil Judge has referred to the document Ex.P1, dated 26.05.1976, at some places as a sale deed and at another place as a conveyance deed).

9. The defendants' plea with regard to purchase of the property vide a sale certificate dated 17.04.1997 (Ex.D8), issued by the Tehsildar (Sales) Faridkot, was, in effect, held to be a document 'without any basis to it', as the property actually had already been purchased by Jhanda Ram vide the 'sale deed', on the basis of which Jhanda Rams' name was entered in the municipal record. It was further held that there was no specific order of any competent authority by which the appellant, Mangat Rais', name was entered in the municipal record in place of Jhanda Ram and as such, it was not understood as to how he came to be recorded as the owner of the suit property.

It also needs to be noticed here that though the detail of how the sale certificate had been issued to Jhanda Ram is not given in the judgment of the learned Additional Civil Judge, however, the import of the judgment is to the effect, that it was issued validly in his favour.

10. As regards the plea of the present appellant (defendant) being a

bonafide purchaser, it was held to be a plea not available to him on the same ground, i.e. that Jhanda Rams' name continued to be shown as the owner of the property in the municipal records, uptill the time that the name of the first plaintiff was entered therein, and had the defendant exercised due diligence, he would have known that the name of the plaintiff also existed in the municipal record.

Thus, the plea of the defendant being a bonafide purchaser of the property, vide the sale certificate of 1997, was also rejected.

11. As regards adverse possession, that plea was rejected by the Additional Civil Judge on the ground that when the defendant was taking a specific plea of permissive possession, on the basis of a sale deed in his favour, he could not simultaneously take the plea of adverse possession as well, (as an alternate plea). The entries in the municipal record, Exs.D15 to D20, showing payment of house tax by the appellant-defendant, were also held to be of no aid to him in the context of the plea of adverse possession, such possession firstly being pleaded by the appellant himself to be titular possession by way of purchase.

Further, even with that contention rejected by the Court, on adverse possession, it was further held to be not so, holding that actually the appellant-defendant had come into possession of the property by permission of the plaintiffs.

12. An issue having been framed as to whether the firm M/s Mangat Rai Vijay Kumar was a necessary party or not, that was also decided against the defendant, on the ground that whereas DW5 Vipin Kumar (an Assistant from the Income Tax office), had deposed that the firm was a proprietorship firm, the defendant had stated that it was a partnership firm, and in either

case, no documents to prove as to when it came into existence were produced, nor were any income tax returns filed even to try and show that there was any connection of the firm with the suit property.

Hence, that issue was also decided against the defendant.

13. Thus, having held as above, with the issue of 'improper' court fee also decided against the defendant, the suit of the plaintiffs was decreed in their favour, with a direction to the defendant to hand over vacant possession of the suit property to them.

14. An appeal was consequently filed by the present appellant before the first appellate Court, against the judgment and decree of the learned Additional Civil Judge. During the pendency of that appeal, by an order of this Court, in a revision filed by the appellant, he had been allowed to amend his written statement, wherein he stated that he had spent about Rs.4,00,000/- on reconstruction of the house, believing himself to be its owner, in good faith. He further stated that the value of the property was more than Rs.5,00,000/- and as such, the plaintiffs were required to affix the Court fee on the market value and therefore, the suit of the plaintiffs deserved to be dismissed on that ground alone, with special costs.

However, though the written statement had been allowed to be amended and was so amended as above, however, the Court had not allowed the appellant-defendant to lead any fresh evidence with regard thereto.

An additional issue was therefore, subsequently framed by the first appellate Court, as follows:-

“5-A) Whether the defendant is entitled to receive the benefit u/s 51 of the Transfer of Property Act? OPA”

15. Upon appraising the evidence led before the trial Court, and the judgment of that Court, the first appellate Court also found that Jhanda Ram, upon migration from Pakistan, had been allotted the suit property, in respect of which eventually the sale certificate dated 26.05.1976 was issued, Ex.P1, which was registered on 25.08.1976, (both documents together constituting Ex.P1), and that “Ex.P2 is the conveyance deed dated 26.02.1975”.

That Court also held that these documents were more than 30 years old as on the date that they were tendered into evidence (8.8.2006) and as such, there was a presumption of truth in their favour. It was further held that in any case the defendant had failed to prove that the documents did not pertain to the suit property, or that they were forged and fabricated documents.

The first appellate Court also recorded a finding that “It is also not disputed that Jhanda Ram migrated from Pakistan, As such it must, be held that the suit property was transferred to Jhanda Ram who became its owner,”

16. On the aforesaid reasoning, that Court also, like the lower Court, held that the property could not be held to have been validly transferred in the name of the defendant vide the sale certificate Ex.D-8, dated 17.04.1997, issued by the Tehsildar (Sales), Department of Rehabilitation, Faridkot.

It was further seen by the Addl. District Judge that in the house tax assessment register for the year 1976-77 (Ex.P5), the property had been shown to be in the ownership of Jhanda Ram, though a subsequent entry was made, showing that it was purchased by Mangat Ram, which entry the Court concluded was made in 1997, on the basis of the sale/conveyance deed relied upon by the appellant in his favour, Ex.D8, dated 17.04.1997.

It was also found that the defendant had obtained an electricity connection on the property but he had not disclosed any document of ownership at the time when he had applied for the connection, which fact could not be denied even by the official from the Electricity Board, who testified as DW1.

17. On the issue of the appellant being a bonafide purchaser, the first appellate Court also came to the same conclusion as the learned Additional Civil Judge, that the defendant himself, in his cross-examination, had admitted that he did not make any enquiry from the office of the Sub-Registrar, Faridkot, with regard to the ownership of the property and he could not say if Jhanda Ram was recorded as its owner in the municipal records.

It was also found that before he got the sale certificate, Ex.DB (actually Ex.D8), the appellant could not show any document by which he had acquired title to the suit land and, therefore, he not having made any enquiries before he purchased the suit property in 1997, he could not be considered a bonafide purchaser thereof.

18. On adverse possession, referring to the law on the subject, including a judgment of the hon'ble Supreme Court in Achal Reddi v. Ramakrishna Reddiar (1990 (1) RRR 56), the finding of the trial Court was upheld, to the effect that the plea of adverse possession could not be taken simultaneously with a plea of permissive possession on the basis of a sale deed, and consequently that plea of the appellant was also rejected.

19. As regards the contention of the appellant that he had spent Rs.4,00,000/- on the reconstruction of the house, taking himself to be its owner, it was found that though in his written statement he had stated that he

had spent that amount, in his affidavit which was taken as his examination-in-chief, he had stated that he had spent only Rs.2,00,000/-.

In any case, as no evidence could have been led by him in that regard (this Court not having permitted to do so in the revision petition), that plea too was rejected. It was also held that he not being a bonafide purchaser, he would not be entitled to any money even if it had been spent by him on the suit property.

20. Consequently, the first appeal of the appellant was also dismissed, thereby upholding the decree passed by the learned Additional Civil Judge in favour of the plaintiffs-respondents.

Hence, this 2nd appeal by the defendant in the suit.

21. Before this Court, Mr. Vijay Kumar Kaushal, learned counsel for the appellant, submitted that firstly, the Courts below have recorded a wholly erroneous, in fact a perverse finding, to the effect that the appellant-defendant, had admitted Jhanda Ram to have migrated from Pakistan and secondly, that a valid sale certificate qua the suit property had ever been issued in his favour.

Learned counsel submitted that as regards the documents, i.e. the sale certificate set up by the appellant on 26.05.1976 and its registration vide the document dated 25.08.1976, together constituting Ex.P-1, the learned Courts below wholly erred in holding that they were to be treated as proved documents, despite no witness of the office of the issuing authority/Registration Authority, having testified to their authenticity. As such Section 90 of the Indian Evidence Act, 1872, would not be applicable in any case.

He further submitted that in terms of Sections 91 and 92 of that

Act, the appellant was very much within his right to prove that in fact it was he who was the owner of the suit property, both, on account of a sale certificate issued in his favour on 17.04.1997 (Ex.D-8) and in the alternative, in any case by way of adverse possession, on account of the fact that the suit property was proved to have remained in his possession at least since 1972, as even DW-1, i.e. the Clerk from the office of the SDO of the Punjab State Electricity Board, had testified that the electricity connection on the suit property had been given to the appellant on 31.05.1972, also giving the account number existent since then.

Thus, simply because the application made for the connection was not available, being old record, but with the electricity bills since 1997 (Ex.D-2) also showing the appellant to be the person in whose name the electricity connection existed, he could not have been ousted, as the evidence led amply proved the possession of the appellant over the suit property, for the past 40 years.

Moreover, learned counsel submitted that even the Municipal records, at least since 1997, showed him to be in possession, paying house tax for the suit property.

22. He next argued that the sale certificate (Ex.D8) having been validly issued to the appellant, duly proved by DW-3, with consideration having been paid to the Department of Rehabilitation by the appellant, he in any case was a bona fide purchaser thereof, in terms of Section 41 of the Transfer of Property Act, 1882.

On this, learned counsel further submitted that with a specific document having been exhibited by the appellant, with regard to the sale of the property in his favour, not refuted by the respondents, the said evidence in

any case would override the documentary evidence relied upon by the plaintiffs (respondents), i.e. the sale certificate (Ex.P-1), upon which reliance was only placed under Section 90 of the Evidence Act.

23. Mr. Kaushal then submitted that Jhanda Ram was never proved to have been in possession of the suit property ever and he having died in the 1960s, a sale certificate issued subsequently in favour of the plaintiffs in any case would be invalid, even though the genuineness of that certificate (Ex.P1) itself is denied by the appellant.

Learned counsel further pointed to the fact that even that sale certificate is shown to have been issued in favour of six persons, of which only two filed the suit. Hence, the suit was non-maintainable on that ground also and further proved that the sale certificate relied upon by the plaintiffs-respondents was not a valid document.

Mr. Kaushal contended that even if the other persons named in the said sale certificate are eventually accepted by this Court to be co-sharers in the suit property, along with the plaintiffs, a decree of declaration in any case could not have been issued in favour of only two legal heirs of Jhanda Ram.

24. Learned counsel next submitted that the original allotment letter of 1955 having never been exhibited, which was contended to have been issued in favour of Jhanda Ram, allegedly allotting the suit property to him in lieu of property left behind in Pakistan, the alleged sale-deed dated 26.05.1976 in any case was without any basis.

25. The next contention of Mr. Kaushal was to the effect that the plaintiffs had admitted that the mother of plaintiff no.1, Parvati Devi, had died on 13.02.1968 at Delhi, and that they started asking the defendant to

hand over the possession of the suit property two to three years after the death of their mother and that they never issued any written notice in that regard.

In this regard, he pointed to the cross-examination of the first plaintiff, PW-1.

Hence, he contended that with the suit property in any case admitted to be in possession of the appellant before 1972, the suit itself, seeking a declaration and possession of the house, was barred by limitation.

26. He next contended that the contention of the plaintiffs that the appellant had been in permissive possession of the suit property on account of it having been handed over to him for looking after by one Vas Dev, was again a wholly uncorroborated contention, with no witness in that regard having been examined other than the first plaintiff himself.

27. Mr. Kaushal next submitted that the suit property being on rent with a partnership firm, M/s Mangat Rai Vijay Kumar, comprising of the appellant, Vanit Kumar and Ramesh Kumar as partners, the said firm was a necessary party and as such it not having been impleaded despite an objection having been taken in regard thereto before the Courts below, the suit in any case was bad for non-joinder of a necessary party.

28. Mr. Kaushal cited judgments of the Supreme Court in the case of Gangamma v. Shivalingaiah, (2005) 9 SCC 359, as also in Lakhi Baruah v. Padma Kanta Kalita, AIR 1996 SC 1253 and Sital Das v. Sant Ram, AIR 1954 SC 606, in support of his contentions.

On the aforesaid arguments, learned counsel for the appellant prayed that the appeal be allowed and the impugned judgments and decrees

of the learned Courts below be set aside and the suit of the respondents-plaintiffs be dismissed with costs throughout.

29. Opposing the aforesaid arguments, Mr. Sanjay Majithia, learned Senior Counsel appearing for the respondents-plaintiffs, first submitted that no substantial question of law arises in this second appeal, which therefore deserves dismissal on that ground alone.

Learned Senior Counsel next submitted that the sale certificate in favour of the plaintiffs was registered on 25.08.1976 and was actually issued on 26.05.1976; therefore, as noticed by the learned lower appellate Court, it having been tendered in evidence on 08.08.2006, it was a document that was more than 30 years old and as such was per se admissible in evidence. In this regard, he relied upon a judgment of a coordinate Bench of this Court in **Kuldip Singh v. Smt. Balwant Kaur**, 1991 PLJ 286, wherein it was held as follows:-

“In view of the authoritative pronouncements it is held that document executed on an earlier date though registered later will operate from the date of its execution, if it is duly registered. Therefore, sale deed which was executed in favour of the plaintiff/appellant on 3rd of November, 1971, though registered on 14th of May, 1975, shall come into operation with effect from 3rd of November, 1971.”

Therefore, learned Senior Counsel submitted that even though on the date that the document was tendered into evidence, the date of registration was 17 days short of 30 years, however, the document itself being 30 years and 2 ½ months old on 08.08.2006, it was very much admissible in evidence, with a presumption raised in favour of its authenticity in terms of Section 90 of the Evidence Act.

In this regard, he also relied upon a judgment of the Privy

Council in Surendra Krishna Roy and another v. Mirza Mahammad Syed Ali Mutawali and others, AIR 1936 Privy Council 15, wherein it was held as follows:-

“At one time it was argued that S. 90 would not apply to this document by reason that it was filed in Court by the plaintiffs on 11th November 1918. Their Lordships are however, of opinion that under S.90, Evidence Act, the period of 30 years is to be reckoned, not from the date upon which the deed is filed in Court but from the date on which, it having been tendered in evidence, its genuineness or otherwise becomes the subject of proof. This was decided in 5 CLR 135.”

30. Mr. Majithia next submitted that the suit property had been allotted in favour of deceased Jhanda Ram in lieu of property left behind in district Lyallpur, Pakistan and the original conveyance deed of the Lyallpur property, dated 26.02.1935, was duly exhibited as Ex.P-2.

He further submitted that as regards Jhanda Ram having died before issuance of the sale deed dated 26.05.1976 is concerned, that argument is without any basis in view of the fact that it is contained in paragraph 17 of Chapter -VIII of the Land Resettlement Manual 1952, as follows:

“17. Even where a displaced landowner in whose name land stands in the records received from West Punjab has died, the allotment is made in the name of the deceased. In the fard taqsim, therefore, the entry will be in the name of the deceased landholder. Possession is ordinarily given to the heirs but there must be regular mutation proceedings before the entry in column 3 of the land taqsim is altered in favour of their heirs.”

He further submitted that the aforesaid provision in the Manual, has been upheld by this Court in Gurdev Singh and another v. Jagroop Singh, 1993 (1) Revenue Law Reporter 7.

31. Learned Senior Counsel next submitted that on the basis of the sale certificate, a mutation was entered in the assessment register of the Municipal Council, Faridkot, for the year 1976-77, which was duly exhibited as Ex.P-5 before the Courts below and any subsequent change in the entry of the ownership of the property, in favour of the appellant-defendant, without even any notice having been issued to the plaintiffs (respondents herein), was wholly illegal and cannot be deemed to be a valid entry.

32. As regards the reliance by the learned counsel for the appellant on the sale certificate of 1997, Ex.D-8, in favour of the appellant, learned Senior Counsel submitted that the Courts below have rightly rejected that certificate, it being actually wholly for extraneous consideration, the suit property having been duly allotted earlier to the late Jhanda Ram, father of plaintiff no.1 and grand-father of plaintiff no.2, in lieu of property left behind in Pakistan, with such allotment never cancelled. Hence, a second sale certificate, issued 21 years after the original one of 1976 and actually more than 40 years after the original allotment was made on 01.10.1955, as shown in the sale certificate Ex.P-1, was a wholly illegal sale made by the Department to the appellant.

33. Last, Mr. Majithia submitted that as regards the suit not being maintainable in the absence of other co-sharers as parties to the suit, the contention of the learned counsel for the appellant is wholly misconceived, in view of the judgment of the Full Bench of this Court in Ajmer Singh and others v. Shamsheer Singh alias Sher Singh and others, 1983 PLR 786, wherein it has been held that a suit for possession against a trespasser can be filed by one of the co-sharers in respect of the entire property, without

impleading the other co-sharers, and a decree with regard thereto can be issued in favour of the plaintiff-co-sharer.

On the aforesaid arguments, learned Senior Counsel prayed for dismissal of the appeal.

34. Having considered the aforesaid arguments, as also the impugned judgments and decrees of the Courts below, the first contention that needs to be dealt with is as to whether any question of law arises in the present appeal so as to warrant interference by this Court.

Though Section 100 of the CPC is not entirely applicable to this Court in terms of what has been held by a Constitution Bench in **Pulparambil Vasudevan v. Nanganadath PulparambilDevadasan and others**, 2016 (2) RCR (Civil) 245, however, even Section 41 of the Punjab Courts Act, 1918, essentially stipulates that a second appeal would be maintainable on a question of law. The obvious difference is that whereas Section 100 CPC stipulates only a substantial question of law, Section 41 of the Act of 1918, simply speaks of a question of law.

Be that as it may, in the opinion of this Court, in any case the following substantial questions of law do arise in this appeal, in terms of which arguments have also been addressed:-

- i) Whether a document exhibited 30 years prior to it being tendered in evidence but registered a few days short of 30 years being complete, as on the date of the tendering of the document in evidence, would be per se admissible in evidence, in terms of Section 90 of the Indian Evidence Act, 1872?
- ii) What is the date from which the 30 year period is to be computed backwards from, to determine whether a document

is admissible in evidence, in terms of Section 90?

iii) As to what can be termed to be proper custody as stipulated in Section 90 aforesaid?

iv) Whether the defendant can be allowed to plead ownership of the suit property by way of adverse possession as an alternative plea, when he is taking a preliminary plea of ownership by titular possession on the basis of a sale certificate in his favour?

Hence, as regards that contention of the learned Senior Counsel appearing for the respondent, it is rejected, with substantial questions of law existing and in fact in terms of which arguments have been addressed by learned counsel on both sides.

Hence, this Court proceeds to deal with each of the aforesaid questions, in the context of the facts of the case.

35. Before going on to the first question with regard to the applicability of Section 90 of the Evidence Act on the documents exhibited by the respondents-plaintiff, the documents themselves need to be considered, as their authenticity itself has been doubted even before this Court.

The first part of Ex.P1, i.e. the sale certificate shown to be issued by the Managing Officer (Headquarters), Department of Rehabilitation, Government of Punjab, Jullundur, on May 26, 1976, is a document in the *Gurmukhi* script (now laminated but duly seen to be signed by the learned Civil Judge, on 08.08.2006). The said document is shown as Form- XXIV issued under Rule 91(8) (of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955).

Next to this printed part on the top of the certificate, it is typed (when translated), as follows:-

“Date of Transfer 1-10-55”

As per learned senior counsel appearing for the respondents-plaintiffs, this date is actually the date on which the property was allotted in the name of Jhanda Ram, though there is no such reference to that date seen thereafter, in the document.

The certificate is to the effect that the suit property was being transferred to respondent-plaintiff no.1, Om Parkash, to the extent of a 3/10th share, Shri Ved Parkash (respondent-plaintiff no.2), again to the extent of a 3/10th share, as legal heirs of Smt. Parvati and Amar Nath. A 1/5th share each is also shown to be transferred to Smt. Shanti Devi and Sita Devi.

The contention of learned counsel for the respondents-plaintiffs is that these persons are all legal heirs of the late Jhanda Ram, with the first plaintiff, Om Parkash, being his son, the second plaintiff, Ved Parkash, being his grand-son (son of Shri Amar Nath) and the two ladies, Shanti Devi and Sita Devi, also being his legal heirs.

The document on its reverse side gives the address and location of the property and carries two seals, one of the Managing Officer, Rehabilitation Department, Punjab, Jullundur, with the Ashoka Lion contained in the seal; the other seal being that of the Managing Officer (Headquarters), Jullundur, affixed at two places, with the signatures of the Managing Officer seen appended over the seal, also carrying the date 26/5/76, written in hand at one of the two places. The document itself is shown to be endorsed to three persons, i.e. the Sub-Registrar, Faridkot, the Executive Officer, Municipal Committee, Faridkot and the Excise and

Taxation Officer, Faridkot. The copy exhibited is seen to be endorsed specifically to the Sub-Registrar.

The second part/page of Ex.P1, is that by which the document is shown to be registered before the Sub-Registrar, under his seal and signature, carrying the thumb impression of the first plaintiff, Om Parkash, with two witnesses, i.e. Gurdarshan Singh, Ex. Municipal Councilor and another, Ranjit Singh.

The date of registration is shown to be 25.08.1976.

Very obviously, the sale certificate is not executed in the name of Jhanda Ram, to whom the allotment is stated to have been made in the year 1955.

36. Before going on to the admissibility of this document under Section 90, the other documents relied upon also need to be discussed.

What has been described as a deed of conveyance dated 26.02.1975 by the learned lower appellate Court, in respect of the suit property, is Ex.P2, but this document has obviously been wholly misappreciated by that Court. In fact, it is a deed of conveyance of land granted to the late Jhanda Ram, not on 26.02.1975 but on 26.02.1935, in Lyallpur (West Punjab, now in Pakistan). The consideration of the land allotted is also shown in the said conveyance deed, which is signed by the Collector, Lyallpur, on its last page, and on the first page carrying a seal showing the picture of the then British Sovereign. It also carries a stamp of Rs.6/- on it.

Hence, as regards this document, it was not a conveyance deed for the suit property, but is contended to be the property left behind in Pakistan, in lieu of which Shri Jhanda Ram was allotted the suit property upon his migration to Faridkot, in the wake of the partition of the country.

37. The next document, Ex.P3, is seen to be an order of the Claims Officer, Jullundur, Camp Amritsar, dated 15.03.1951, holding therein that Shri Jhanda Ram had proved that he was entitled to claim property worth Rs.4598/-, in lieu of property left behind by him in Pakistan, including a house-cum-shop measuring 14-1/2 marlas purchased by him in the year 1935, for a sum of Rs.363/14 Annas, situated in village Chak No.57 JB, with the distance of the village being 7 miles from Lyallpur.

Obviously, this reference is to the property in respect of which the conveyance deed dated 26.02.1935 was executed (Ex.P2).

38. The next document is the order dated 12.04.1974 (Ex.P4), issued by the Settlement Commissioner, Punjab, Jullundur, which is not the original document but a certified copy thereof issued on 19.04.1974, by which the appeal filed by the first respondent-plaintiff, Om Parkash, against a demand of penal interest of Rs.885/- ordered by the Managing Officer (Headquarters), Jullundur, was allowed in respect of the suit property, shown to be property no.L-24, Faridkot.

As already noticed earlier, by this order dated 12.04.1974, the appeal of the first respondent herein was accepted and the order of the Managing Officer dated 21.02.1974, passed under the Displaced Persons (C & R) Act, 1954, was set aside.

The aforesaid four documents, therefore, constitute the foundation of the case of the plaintiffs.

39. Thus, Mr. Majithia, learned senior counsel, has submitted that these documents when read together, amply prove that Shri Jhanda Ram had been duly allotted the suit property, earlier simply numbered as No.L-24, Faridkot and even though the original deed of allotment dated 01.10.1955

could not be produced, the order dated 15.03.1951, Ex.P3, read with order dated 12.04.1974, Ex.P4, proved that it was this very property that had been allotted to Jhanda Ram, in respect of which the sale certificate, Ex.P1, was issued on 26.05.1976, registered three months later on 25.08.1976.

40. Thus, the question that now arises is as to whether these documents dated 26.05.1976, 25.08.1976, 26.02.1935, 15.03.1951 and 12.04.1974 are *per se* admissible in evidence in terms of Section 90 of the Indian Evidence Act, 1872, without having to be proved by any oral testimony of any person to support them.

Section 90 aforesaid, reads as below:-

"90. Presumption as to documents thirty years old.—Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested."

41. What is now to be considered, is whether the documents other than those which were very obviously more than 30 years old, even on the date of the institution of the suit, can be considered to be 30 years old, i.e. specifically Ex.P1, executed on 26.05.1976 and registered on 25.08.1976. The other documents being of the years 1935, 1951 and 1974, were obviously documents more than 30 years old even on the date of the institution of the suit, i.e. on 09.11.2005.

This is other than the fact as to whether, even being 30 years old,

they can be considered to have been produced from proper custody, so as to be admissible in evidence in terms of Section 90.

Again obviously, Ex.P1, even if taken from its date of execution and not the date of its registration, was less than 30 years old on the date of the institution of the suit (09.11.2005), 30 years only being complete in respect of this document about five and half months after 09.11.2005, i.e. only by 26.05.2006.

However, learned senior counsel had first relied upon a judgment of the Prevy Council in *Surendra Krishna Roys'* (supra) wherein, as already noticed, it was held that the period of 30 years, for the purpose of Section 90 of the Evidence Act, is to be reckoned not from the date on which the deed (in question) is filed in Court, but from the date on which it was tendered in evidence.

The ratio of this judgment was reiterated by the Supreme Court recently in ***Om Parkash v. Shanti Devi and another*** (2015) 4 SCC 601.

Thus, it not having been refuted by learned counsel for the appellant-defendant that it was actually tendered in evidence on 08.08.2006, which is also the date written in hand under the signatures of the learned Civil Judge, describing the documents to be Ex.P1, on that date most definitely, a period of 30 years, 2 months and 13 days had elapsed from the date of the execution of the document, i.e. from 26.05.1976.

I also see no reason to not respectfully follow the ratio of the judgment of a co-ordinate Bench in *Kuldip Singhs'* case (supra), holding that a sale deed would come into effect from the date of its execution even where it was registered later. Hence, even though the date of registration in the present case (of Ex.P1), falls short of 30 years by 17 days, the document

having been tendered in evidence on 08.08.2006, however, since the sale deed/ sale certificate itself was issued on 26.05.1976, this Court has no hesitation in accepting it to be a 30 year old document.

42. Coming to the authenticity of this document, again I have no doubt in my mind, having seen the document and the accompanying documents, i.e. Exs.P3, P4 and P2, described in detail earlier, that the sale certificate/sale deed was indeed issued to the respondent-plaintiffs, along with the two ladies whose names are given in the deed, in lieu of property left behind in Pakistan, by Jhanda Ram.

43. The question next is whether the presumption as regards the authenticity, is in conformity with the criteria prescribed in Section 90, i.e. other than the document being 30 years old, it should be produced from any custody which the Court considers proper in a particular case.

In the present case, in the opinion of this Court, the documents Exs.P1 to P4 have been produced from the custody of persons in whose favour the document is shown to be executed and who, in normal circumstances, would be possessing those documents, i.e. those who claim title to the property on the basis of those documents that were executed 30 years or more earlier. As regards Ex.P1, it having been executed in favour of the two plaintiffs and two other ladies who are stated to be heirs of Jhanda Ram, the custody of that document, with them, would be considered to be proper by this Court, with nothing shown by the appellant-defendant that the respondents-plaintiffs were not actually those persons in favour of whom the sale certificate was issued. Though of course the genuineness of the document and even the factum of the respondents-plaintiffs being the legal heirs of Jhanda Ram has been denied by the appellant-defendant, I see no

reason to hold in the appellants' favour in that regard, no evidence whatsoever having been led to show that the first plaintiff-respondent was not Jhanda Rams' son and the second plaintiff not his grand-son, son of Amar Nath son of Jhanda Ram.

Further, the documents Exs.P2 and P3 being in respect of property owned by Jhanda Ram in District Layyapur (now in Pakistan) and the order of the Claims Officer in Jhanda Rams' favour (respectively), again custody of these document would normally and naturally be with the legal heirs of Jhanda Ram.

Yet further, as regards evidence of the first respondent-plaintiff being the son of Jhanda Ram, as also the person with whom Ex.P4 would normally be, it is seen that the document itself dated 12.04.1974 (more than 30 years old even from the date of the institution of the suit). In this document, the first respondent, Om Parkash, is shown to be the son of Jhanda Ram and the order itself is in his favour, i.e. in Om Parkashs' favour. Naturally, he would normally expected to be the person in whose possession the document would be.

44. Hence, as regards the question of the documents Exs.P1 to P4 coming from custody which the Court considers to be proper, I have no reason to doubt that the custody of these documents to have come from persons in whose custody such documents normally would be and therefore, the discretionary presumption conferred on the Court by Section 90, in the opinion of this Court, would certainly be in favour of the respondents-plaintiffs.

It, of course, needs to be noticed that the learned Courts below have not gone in detail on the issue of the custody of these documents

coming from proper custody. However, they were accepted to be admissible in evidence, simply being 30 years old, but with this Court having gone into the issue of proper custody, and having found such custody to be proper, I find no ground to reverse the finding of the Courts below holding the documents to be *per se* admissible in evidence, in terms of Section 90 of the Evidence Act.

45. On the issue of what proper custody would be, other than the fact that the explanation of Section 90 itself stipulates that documents are said to be in proper custody if they are under the care of the person with whom they would naturally be and that no custody would be improper, if it is proved to have had a legitimate origin, it was held in the old English case of **Bishop of Meath v. Marquis of Winchester** (3) Bing NC 198 (at page 200) as follows:-

“Documents found in a place in which, and under the care of persons with whom such paper might naturally and reasonably be expected to be found, are precisely the custody which gives authenticity to documents found within it; for it is not necessary that they should be found in the best and most proper place of deposit. If documents continued in such custody, there never would be any question as to their authenticity; but it is when documents are found in other than the proper place of deposit, that the investigation commences, whether it was reasonable and natural under the circumstances in the particular case, to expect that they should have been in the place where they are actually found;”

In fact, Section 90 in the Evidence Act, is considered to be actually based upon what was held in the aforesaid decision.

Similarly, in Doe v. Samples (8) Ad and E 151), it was held that “It is enough if the person be so connected with the deed that he may reasonably be supposed to be in possession of it without fraud, no such fraud being proved”.

A perusal of the above would show that if a document is shown to have been produced from the custody of a person who would naturally have it, it would be considered to be proper custody, which this Court has already held to be so in the present case, the respondents-plaintiffs being the persons with whom the documents Exs.P1 to P4 would normally be, they and their predecessors being the persons to whom the suit property was stated to have been allotted and transferred. No fraud in this regard, as already said, could be shown by the appellant-defendant.

46. Hence, to sum-up on this issue, it is seen that it was the case of the respondents-plaintiffs that the father of the first plaintiff, Jhanda Ram, was allotted the suit property in lieu of property left behind by him in Pakistan. In support of that contention, the plaintiffs produced by way of evidence an order of the Claims Officer, Jullundur, dated 15.03.1951 (Ex.P3), referring to property left behind by Jhanda Ram in Pakistan, including a 14-1/2 marla house-cum-shop purchased by him in the year 1935, situated in Chak No.57 JB, 7 miles from Lyallpur Town. The claim of Jhanda Ram was admitted to the extent of Rs.4598/-. Proof of the said property of Jhanda Ram in Lyallpur was further accepted in the order of 1951, in the form of a sale deed of land measuring 14-1/2 marlas, executed by the Collector Lyallpur, in favour of Jhanda Ram in 1935. In the opinion of this Court, this would obviously seem to be the conveyance deed Ex.P-2, which describes the Lyallpur property as is described in the order of the Claims Officer dated

15.03.1951 (Ex.P-3).

The third document, Ex.P4, would also, in my opinion, substantiate the earlier documents, as it is an order in the appeal filed by respondent-plaintiff no.1, son of Jhanda Ram, passed by the Settlement Commissioner, Punjab, setting aside the order of the Managing Officer, Jullundur, raising a demand of Rs.885/- as penal interest, concerning property no.L-24, Faridkot, which is the same property as is shown to have been transferred vide the sale certificate/sale deed dated 26.05.1976, registered on 25.08.1976 (Ex.P1). It has not been contended before this Court that the same property was not later re-numbered as B-III 182, i.e. the suit property, as the sales certificate of the Department of Rehabilitation, Ex. D-8, relied upon by the appellant-defendant also gives that number of the property as does exhibit P-5 relied upon by the respondent plaintiffs, though that document further describes it to be number 160, after showing it as 182 in the immediately preceding column.

47. As opposed to the above documentary evidence, no evidence having been led by the present appellant-defendant to disprove the genuineness of the aforesaid documents, despite his contention that they were forged and fabricated documents, and with the Courts below having accepted them as genuine documents being at least 30 years old, in terms of Section 90, and this Court also having found that these documents are not seen to be unbelievable or forged in any manner, also having been produced from proper custody, the findings of the Courts below to the effect that the suit property was duly allotted to the respondents-plaintiffs, in lieu of property left behind in Pakistan by Jhanda Ram, is upheld.

48. A reference however, is still necessary to the judgments cited by

Mr. Kaushal, learned counsel for the appellant, in *Gangammas'* and *Lakhi Baruahs'* cases (supra), wherein, in the former case it was held that Section 90 of the Evidence Act nowhere provides that in terms of the authenticity of the recitals contained in a document, they would be presumed to be correct. In fact, it is well settled law that even in respect of a document that is 30 years or more old, even if it is accepted to be a document admissible in evidence, without any supportive evidence led in respect thereof in terms of Section 68 of the Evidence Act, the presumption in favour of the document would only be with regard to the correctness of the signatures appended in such document, and not with regard to the truth of its contents. Yet, in the present case, once the documents Exs.P1 to P4 have been accepted by this Court to be genuine, in terms of Section 90, even the contents of these documents, when read as a sequence starting from the document executed in 1935, Ex.P2, going thereafter to the order of the Claims Officer passed in 1951 (Ex.P3), the order of the Settlement Commissioner (Ex.P4) passed in an appeal, on an issue of interest payable in respect of the suit property, leading up eventually to the execution of the sale certificate (Ex.P1), in favour of the plaintiffs and two other legal heirs of Jhanda Ram, then the contents/recitals contained in these documents, lend no reason for any doubt.

49. It must also be stated here that the contention of learned counsel for the appellant that the sale certificate having been issued in favour of the two plaintiffs and two ladies who are not parties to the *lis*, and therefore, the suit itself was not maintainable, is not an argument that is to be accepted, as the question in the present *lis* is as to whether the plaintiffs, or the appellant-defendant, have a right to the suit property. If the other two ladies (co-allottes) whose names are given in the sale certificate (Ex.P1), have any

grievance qua there own shares in the suit property, such grievance would be qua the respondents-plaintiffs only, the appellant not having shown that he had any common interest, in any manner whatsoever, with the other two laides/vendees, i.e. Smt. Shanti Devi and Smt. Sita Devi. Thus, if those two ladies have any grievance viz-a-viz respondents-plaintiffs, they would have their remedies available to them, qua such grievance.

50. As regards the contention of Mr. Kaushal that the plaintiffs not being the original displaced persons from Pakistan who had raised a claim for allotment of the suit property, such person being Jhanda Ram, the judgment of a co-ordinate Bench, cited by learned senior counsel for the respondents, in *Gurdev Singhs'* case (*supra*) can be referred to.

As already noticed, paragraph 17 of Chapter VIII of the Land Resettlement Manual, 1952, stipulates that even where the displaced land holder, in whose name the land stands in the records received from West Punjab, has died, the allotment is to be made in the name of the deceased and the *fard taqsim*, the entry would be in the name of the deceased land holder, though possession would ordinarily be given to the heirs; but there must be regular mutation proceedings before the entry in column no.3 of the *fard taqsim* is altered in favour of the heirs.

In the present case, to repeat yet again, the claim of the plaintiffs was in respect of allotment made to the late Shri Jhanda Ram in the year 1955, in lieu of property left behind by him in Pakistan. Undoubtedly, the original allotment letter in favour of Shri Jhanda Ram was not produced. However, with the order of the Claims Officer, Jullundur, dated 15.03.1951 having been produced, admitting Jhanda Rams' claim and the sale certificate Ex.P1, issued in favour of the legal heirs of Jhanda Ram (including the two

plaintiffs), referring to a transfer deed dated 01.10.1955, then even though the procedure laid down in paragraph 17 of the Manual of 1952 was not specifically proved to have been followed, this Court would not hold that the plaintiffs were not entitled to the issuance of the sale certificate, in the light of the documents Exs.P1 to P4, as already discussed in detail.

51. Hence, to answer the first two questions of law formulated by this Court, in respect of Section 90 of the Indian Evidence Act, it is held that in terms of the judgment of the Supreme Court in Roys' and Shanti Devis' cases (supra), as also a judgment of a co-ordinate Bench of this Court also *Kuldip Singhs'* case (supra), holding that the effect of a registered document would take place from the date of its execution, even in terms of Section 47 of the Registration Act, and not from the date of its registration, the 30 year period to be calculated for the purpose of Section 90, would start running from the date of the execution of the document and not from the date of its registration and further, the date on which the document should have been at least 30 years old, would be the date on which it is tendered in evidence before the Court for the first time and not from the date it is simply filed in Court.

As regards the third question of law as to what can be termed to be proper custody as postulated in Section 90 of the Act of 1872, it is held that such question would depend upon the circumstances of each case, with the Court exercising its discretion to determine as to whether any custody is proper or not, though normally, if the document is produced from the custody of a person who claims ownership of the property, or his legal heirs, it would be accepted to be proper custody, unless the circumstances indicate any possibility of a fraud being purported.

52. Thus, with the suit property having been held to be validly allotted to the respondents-plaintiffs and two other persons whose names are given in Ex.P1, on the basis of the claim raised by their father/grand-father, Shri Jhanda Ram, in respect of property left behind in Pakistan, and thus, title to the suit property at least at the time of its transfer in 1976, vesting in the legal heirs of Jhanda Ram, he having already died, i.e. in the respondents-plaintiffs and their co-sharers, the next question is that despite this Court having upheld the findings of the Courts below on that issue, would the appellant still be entitled to claim ownership and retain possession of the suit property, either on the basis of the sale certificate issued in his favour on 17.04.1997 (Ex.D8), or on the basis of his possession of the property, such possession having matured into ownership by way of adverse possession.

53. Coming first to the right of the appellant to claim ownership and possession of the suit property on the basis of the sale certificate executed in his favour, Ex.D8. The said certificate (in *Gurmukhi*) is seen to be issued by the Tehsildar (M) Sales, Faridkot, under his seal and the seal of the Department of Rehabilitation, Faridkot. The recital in the sale certificate is to the effect that it has been issued under Section 4 of the Punjab Package Deal Properties (Disposal), Act 1976 [and the rules thereunder, the sale certificate itself having been shown to be in form 'A' issued under Rule 6(6) (XIV)]. The recital further states that it was issued pursuant to an auction held on 26.03.1997, in which the appellant, Mangat Rai, had bid the highest amount for the suit property and had deposited Rs.45,150/- on 04.04.1997. In support of the said document, DW2, Arun Kumar, Reader of the Tehsildar, testified to the effect that he had brought the original register relating to urban evacuee property maintained in the office, alongwith its photostat copy, further

identifying the hand writing of a Senior Assistant, Nand Kishore, in the register. On affidavit, this witness also testified that the file relating to the auction proceedings of the suit property was not traceable in the office. On cross-examination, he is seen to have deposed that the record pertaining to the sale deed also, in favour of the appellant, was not available in the office.

The aforesaid Nand Kishore is also seen to have appeared as DW3, and testified on affidavit that the sale certificate, Ex.D8, was prepared by him and signed by the then Tehsildar (Sales)-cum- Managing Officer, Faridkot and that an open auction took place on 26.03.1997, conducted by the Tehsildar, Shri Pyare Lal. This witness is further seen to have deposed wholly in favour of the appellant having purchased the suit property by depositing the amount given in the sale certificate, as also in respect of the entry made in the register qua the suit property, which the witness testified was in his hand writing.

In cross-examination, he is seen to have deposed with regard to the address of the property having been taken from the municipal record, though also stating that it was not obtained from the municipal council but that the appellant had brought a copy of the assessment register from the municipal council, pertaining to the suit property, and that the said copy "might be in the office".

This witness further denied that Jhanda Rams' name was shown as the owner of the property, or that he was shown in the copy of the assessment register as the owner thereof. He further stated that Mangat Rai was shown to be in possession, which was also proved by the electricity bills in the appellants' name.

Specifically, this witness deposed that no enquiry was made from

the record of the municipal council, or from the office of the Sub-Registrar, as to whether the property had already been sold or not.

54. From the aforesaid testimony, referred to by both learned counsel towards the advantage of the respective parties to the *lis*, it is very obvious that no enquiry whatsoever was actually made from the records of the municipal council before auctioning the property, i.e. if in fact, the suit property was actually ever put to auction, with no auction proceedings having been produced, on the pretext that the file was no longer available. The strange part is as to why in any case, the Tehsildar (Sales) would have put the property on auction without even a notice to the original allottee, the original allotment itself having been made by the same Department.

Though the appellant-defendants' contention of course is that no such allotment was made to either the plaintiffs or their father Jhanda Ram, and as such, the first allotment of the property was made to him only, in the year 1997, however, the very fact that the municipal records reflect Jhanda Ram as the owner of the suit property, in the assessment register, for the year 1975-1976 (Ex.P5), as also found by the Courts below, it would only seem too obvious that the sale certificate of 1997 was issued without any auction proceedings actually having taken place and, as admitted by DW3, without even any verification of the ownership of the property from the municipal records. The appellant himself was also found by the Courts below to have testified to the effect that he had not obtained any attested copies of the assessment registers from the municipal council, Faridkot, right from 1976 to 1992-93. He also denied knowledge of whether Jhanda Ram had been shown to be the owner of the suit property in the municipal record, which naturally shows that he is not a bonafide purchaser of the suit property. In fact, it is

only too obvious that knowing fully well that the suit property was actually in the ownership of Jhanda Ram, he chose not to produce the copies of the assessment register from the municipal records, before seeking to purchase the suit property from the Tehsildar-cum- Managing Officer, Faridkot and thereafter, he somehow managed to actually obtain a sale certificate in his favour.

It is of great significance, as recorded by the learned Courts below, that in his own written statement, the appellant stated that the suit property was transferred to his name by the Tehsildar "on account of his long and continuous possession" thereof. Not even a whisper is seen to have been made that he had purchased it in an auction conducted by the Tehsildar, whereas the sale certificate refers to such auction specifically. Hence, the auction proceedings referred to in the sale certificate, Ex.D8, seem to be sham proceedings and in fact, this may have been otherwise an appropriate case for directing investigation by this Court, which it is only desisting from doing in view of the fact that 19 years have passed since 1997.

55. Consequently, the finding of the learned Courts below that the appellant is not a bonafide purchaser of the suit property and is therefore not entitled to the protection provided under Section 41 of the Transfer of Property Act, is upheld.

56. Last comes the question of whether the appellant can be declared to have become the owner of the suit property by way of adverse possession, and therefore is entitled to retain possession thereof.

In fact, with the evidence led by the appellant, in the form of even the electricity bills, and electricity connection having been issued in his name in the year 1972, duly supported by the testimony of DW1, a Clerk in

the office of the Electricity Board, and with the plaintiffs having admitted to the appellant being in possession of the suit property for a long period of time, this would otherwise have been an appropriate case to declare the appellant to have become owner of the suit property by way of adverse possession, no evidence ever having been led by the respondents-plaintiffs in support of their contention that permissive possession was given to the appellant on their behalf, by their relative, Vas Dev.

57. This would be so, even though Courts are generally reluctant to declare ownership on the basis of adverse possession, it many a time having even been observed that the law in this regard requires amendment. However, with the law standing as it is, to repeat, this may have been a case where this Court may have had no choice but to declare the appellant to have become owner of the suit property on the plea of adverse possession. Yet, even with his possession continuing for a long time, the appellant threw away whatever chance he may have had to claim the property on that basis, by wholly denying the title of the respondents-plaintiffs thereto and in fact setting up a case of titular ownership in his own favour, in the form of the sale certificate Ex.D8. Once a defendant pleads ownership of a property on the basis of the title thereto being his own, by lawful purchase thereof, he is precluded then from claiming ownership and title on the basis of adverse possession. In other words, adverse possession cannot be claimed as an alternate plea, with the principal plea being ownership on the basis of a valid title resting on purchase of the suit property by way of a sale deed, sale certificate, allotment etc. To prove that the title to the property had been perfected in the defendant or had matured in his favour by way of adverse possession, such possession must necessarily be shown to be open and

continuous, hostile to the true owner, to his knowledge. It is very well settled that the ownership on the basis of such possession has to be proved very stringently and not simply as an alternate plea to having an existing title in the suit property. In this regard, a judgment of the Supreme Court in **Mohan Lal v. Mirza Abdul Gaffar** (1999) 1 SCC 639 can be referred to, wherein their Lordships held as follows:-

"3. The only question is whether the appellant is entitled to retain possession of the suit property. Two pleas have been raised by the appellant in defence. One is that having remained in possession from 8-3-1956, he has perfected his title by prescription. Secondly, he pleaded that he is entitled to retain his possession by operation of Section 53-A of the Transfer of Property Act, 1882 (for short 'the Act').

4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., up to completing the period of his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant."

58. Thus, the appellant-defendant having once set up a plea of title to the suit property by way of ownership, on the strength of a sale certificate issued in his favour, he is to be held to be precluded from raising a

plea of perfecting his title by way of adverse possession in the alternate, as has already been held by the Courts below.

59. Consequently, in view of all that has been held hereinabove, where this Court, even as a Court of second appeal, has gone into the evidence in detail, in view of the nature of the arguments addressed, based on documentary and oral evidence, no merit is found in the appeal, which is therefore dismissed, but leaving parties to bear their own costs.

December 20, 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No.