

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

**R.S.A No.3871 of 2011 (O&M)
Date of decision :17.03.2016**

Darshan Singh

..... Appellant

Versus

Kashmir Singh others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Paramjit Batta, Advocate
for the appellant.

Mr. N.S.Dandiwal, Advocate
for respondent no.1.

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

DARSHAN SINGH,J

This Regular Second Appeal has been directed against the judgment and decree dated 01.08.2011 passed by the learned Additional District Judge (Ad hoc), Fast Tract Court-II, Hoshiarpur, vide which the appeal filed by the appellant-defendant against the judgment and decree dated 23.04.2007 passed by learned Additional Civil Judge (Sr. Division), Dasuya, has been dismissed.

2. For the sake of convenience, the status of the parties is being

mentioned as in the original suit.

3. Plaintiff-respondent Kashmir Singh has brought a suit for possession of land measuring 2 Kanals comprised of Khasra no. 61 (4-0) situated at Village Kalu Chang on the allegations that he and his brothers namely Balbir Singh and Sukhdev Singh are joint owners in possession thereof. Defendants have got no right, title or interest in the suit land. They are strong headed persons and taking the undue advantage of their man-power, they had taken the illegal possession of the land measuring 2 Kanals out of the aforesaid Khasra number. Their possession is illegal and unauthorized and is that of a trespasser. They are liable to vacate the suit land after the removal of the superstructure. In the alternative, the plaintiffs have prayed for the possession of that much area of the land out of the aforesaid khasra number which is found to be in illegal possession of the defendants on demarcation. Hence the suit.

4. Appellant-Darshan Singh and his co-defendants contested the suit on the grounds *inter alia* that though the plaintiff is recorded as owner in the revenue record, but, infact the defendants no.1 to 4 had constructed their residential houses in the disputed property in the area measuring 2 Kanals about more than 50 years back. The said property is in possession of the defendants since long as the grandfather of the plaintiff namely Lehnu had given it to the father of defendants no.1 to 4 namely Teja Singh, who got constructed his residential house and at that time the grandfather of the plaintiff was alive. It is further pleaded that the possession of the defendants over the suit property is open, hostile, without any interruption and they have become the owner of the suit land

by way of adverse possession. Thus, they pleaded for dismissal of the suit.

5. Plaintiff filed the replication controverting the pleas raised in the written statement.

6. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 16.10.2001:-

1. Whether the plaintiff is entitled to get possession of the suit land after removal of the super structure?OPP
2. Whether in the alternative, the plaintiff is entitled to get possession of that much area which ever is found encroached by the deft. Out of the suit land of Kh.No.61(4-0), after removal of the super structure over it?OPP
3. Whether defendants nos.1 to 4 have become owners of the suit land by way of adverse possession?OPD
4. Whether the suit of the plaintiff is not maintainable?OPD
5. Whether the plaintiff has got no cause of action to file this suit?OPD
6. Whether the plaintiff has got no locus standi to file the present suit?OPD
7. Whether the plaintiff is estopped to file this suit by his act and conduct?OPD
8. Relief.

7. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit of the plaintiff-respondent for possession vide impugned judgment and decree dated 23.04.2007.

8. Aggrieved with the aforesaid judgment and decree, defendant preferred the appeal and the same was dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 01.08.2011. Hence this Regular Second Appeal.

9. I have heard Mr. Paramjit Batta, Advocate, learned counsel for the appellant, Mr. N.S.Dandiwal, Advocate, learned counsel for respondents and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contended that the property in dispute was given by Lehnua, the grandfather of the plaintiff by way of oral gift more than 50 years ago to Teja Singh, the predecessor-in-interest of the defendants. Thereafter, Teja Singh raised the construction of residential house therein. Since then, the defendants are in continuous, uninterrupted, peaceful, hostile and adverse possession thereof to the exclusion of the plaintiff and his brothers and had perfected their title by way of adverse possession. He contended that from the evidence adduced by the defendants, it is established that the electricity connection was installed in the name of Teja Singh. They have also been paying the house tax since long. But, at no point of time any objection was raised by the plaintiff and his brothers.

11. He further contended that where the possession is transferred by oral agreement and the deed of transfer is not registered, the possession of the transferee becomes adverse to the owner. To support his contentions, he relied upon case **Achal Reddi Vs. Ramakrishna Reddiar 1990 AIR (SC) 553**. He further contended that as the possession of the appellant and his brothers over the suit land was hostile and adverse to the plaintiff and his brothers for the land more than 12 years, so they have become the owners of the suit property by way of adverse possession. To support his contentions, he has relied upon cases **Annakili Vs. A.Vedanayagam & Ors. 2007(4) R.C.R (Civil) 780, Chatti Konati**

Rao and others Vs. Palle Venkata Subba Rao 2011(2) R.C.R (Civil) 824 and Tribhuvanshankar Vs. Amrutlal 2014(1) R.C.R (Civil) 206.

12. He further contended that as the appellant and his brothers are in adverse possession of the suit property for more than 50 years, so the suit filed by the plaintiff-appellant was barred by limitation. Thus, he contended that the impugned judgment and decrees being against law are not sustainable.

13. On the other hand, learned counsel for the respondents contended that the electricity bills and the receipt of Chulha Tax (House Tax) produced by the defendants are not connected with the suit property. He further contended that it is the admitted case of the defendants that they were given the suit land by the grandfather of the plaintiff, so their possession was merely permissive and there is no question of perfection of their title by way of adverse possession. He contended that permissive possession can never be adverse possession. He further contended that the plaintiff has filed the suit for possession on the basis of title. The ownership of the plaintiff is not even disputed by the appellant-defendants. The defendants have not been able to establish the adverse possession. So, the suit filed by the plaintiff is well within limitation. Thus, he contended that the impugned judgment and decree do not suffer from any illegality.

14. I have duly considered the aforesaid contentions.

15. This Regular Second Appeal has been preferred by the defendant against the concurrent findings recorded by both the learned Courts below. There is no dispute with the proposition of law that the

powers of this Court while exercising the jurisdiction under Section 100 of Code of Civil Procedure, 1908 (for short 'CPC'), in the second appeal are limited. As a general principle of law, this Court will not disturb the concurrent findings of facts recorded by the Courts below. The interference in the second appeal can only be justified where the Courts below have misdirected themselves in appreciating the question of law. When material or relevant evidence is not considered which if considered would have led to an opposite conclusion or have placed reliance on inadmissible evidence which if omitted would have led to the opposite conclusion or that the approach of the Courts below is perverse. Keeping in view the aforesaid principles of law, we have to appreciate the contentions raised by learned counsel for the parties.

16. Learned counsel for the appellant has assailed the impugned judgment and decrees on the plea that the appellant and his brothers have become the owner of the suit property by way of adverse possession. Secondly, that the suit filed by the plaintiff was barred by limitation.

17. As far as the ownership of the plaintiff and his brothers is concerned that is not disputed even otherwise it is established from the evidence on record. Plaintiff-Kashmir Singh has stepped into the witness box as PW-1 and has deposed that he and his brothers are the owners of the suit property. The oral evidence is also supported from the copy of the Jamabandies Ex.P-4 for the year 1995-1996, Ex.P-5 for the year 2000-2001, wherein the plaintiff along with his brothers Balbir Singh and Sukhdev Singh have been recorded as co-owner of the land comprised of Khasra no. 61 (4-0). There is no dispute with the proposition of law that

presumption of truth is attached to the entries of the jamabandies as per Section 44 of the Punjab Land Revenue Act. Moreover, the defendants have categorically admitted in the written statement that the plaintiff has been recorded as owner of the suit property in the revenue record. It is also the settled principle of law that when the plea of adverse possession is raised, the title of the opposite party is admitted. Thus, there is no escape from the conclusion that the plaintiff and his brothers Balbir Singh and Sukhdev Singh are the co-owners of the land in dispute.

18. Now, we have to determine as to whether the defendants have been able to establish that they had perfected their title by way of adverse possession. There is no denial to the fact that defendants are in possession of the suit property since long which is established from the oral as well as documentary evidence adduced by the defendants. But, in order to defend the suit, they were required to establish that they had perfected their title by way of adverse possession. The defendants have pleaded that they are in possession of the suit property for the last more than 50 years. But, mere long possession cannot establish the adverse possession. Even, in the case relied upon by learned counsel for the appellant titled as **Annakili Vs. A.Vedanayagam & Ors (Supra)** and **Chatti Konati Rao and others Vs. Palle Venkata Subba Rao (Supra)**, the Hon'ble Apex Court has laid down that mere possession however long does not necessarily mean that it is adverse to the true owner. In case **Dharmarajan & others Vs. Vallimmal & Others 2008 (1) R.C.R (Civil) 278**, the plaintiff was in long possession for about 60 years. He was claiming ownership over the property by way of adverse possession.

The Hon'ble Apex Court held that the long possession cannot clothe a party with the ownership right. Thus, mere long possession cannot establish the ownership by way of adverse possession.

19. The plea raised by learned counsel for the appellant that some oral gift was made by the grandfather of the plaintiff in favour of father of the defendants is beyond pleadings. In the written statement, it is nowhere pleaded that any oral gift was made by grandfather of the plaintiff in favour of Teja Singh, the predecessor-in-interest of the defendants. It is settled principle of law that the plea beyond pleadings cannot be taken into consideration. Thus, this plea raised by learned counsel for the appellant deserves outright rejection and consequently **Achal Reddi's case (Supra)** is not applicable to the facts of the case.

20. In order to establish the adverse possession, the defendants were required to establish their hostile possession by clearly asserting their hostile title in denial to the title of the plaintiff and his brothers, the true owners of the property in dispute. Such possession must be proved to be peaceful, open, continuous in publicity and must start with a wrongful disposition of the true owner. The Hon'ble Supreme Court in case **Karnataka Board of Wakf Vs. Government of India and ors. 2004(2) R.C.R (Civil) 702** has laid down as under:-

“In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must

prove that his possession is '*nec vi, nec clam, nec precario*', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : **S M Karim v. Bibi Sakinal AIR 1964 SC 1254, Parsinni v. Sukhi (1993) 4 SCC 375** and **D N Venkatarayappa v. State of Karnataka (1997) 7 SCC 567**). Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, 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. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (**Dr. Mahesh Chand Sharma v. Raj Kumari Sharma(1996) 8 SCC 128**).”

21. One of the basic ingredient to establish the adverse possession is that it must start with a wrongful disposition of the true owner. The person coming in permissive possession cannot claim the adverse possession howsoever long it may be. The possession initially being permissive cause a heavy burden on the person claiming adverse possession to establish as to when it became adverse to the true owner. The permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of the true owner. Mere possession for howsoever length of time does not result in converting the permissible possession into adverse possession. To support this view, reference can be

made to case **P.T. Munichikkanna Reddy & Ors. Vs. Revamma and Ors. 2007(2) R.C.R (Civil) 847**. In that case, the person had remained in possession of the land for about 50 years. In case **L. Naswathama & Anr. Vs. P. Prakash 2011(7) R.C.R (Civil) 64**, the Hon'ble Apex Court has laid down that mere long permissive possession without *animus possidendi* does not constitute adverse possession. The same legal position has been again reiterated by the Hon'ble Apex Court in case **Tribhuvanshankar Vs. Amrutlal 2014(1) R.C.R (Civil) 206**. In view of the aforesaid consistent ratio of law laid down by the Hon'ble Apex Court, mere permissive possession howsoever long it may be does not remotely come under the spectrum of the adverse possession.

22. In the instant case, it is the admitted case of the defendants that the grandfather of the plaintiff namely Lehnua has given the land in dispute to their father Teja Singh, which clearly indicates that father of the defendant came into possession of the suit land with the permission of the grandfather of the plaintiff. Thus, it is nothing more than the permissive possession of the defendants. Their father came into permissive possession of the suit property, thus they cannot claim themselves to be in adverse possession of the suit property. There is no specific plea or evidence as to when their possession turned hostile/adverse to the plaintiff and his brothers, the true owners of the suit property. Consequently, the defendants have not been able to establish that they have perfected their title by way of adverse possession.

23. I do not find any substance in the plea raised by learned counsel for the appellant that the suit filed by the plaintiff was barred by

limitation. Article 65 of the Limitation Act, 1963 reads as under:-

Description of period	Period of limitation	Time from which begins to run
65. For possession of immovable property or any interest therein based on title	Twelve years	When the defendant becomes adverse to the plaintiff

The limitation for filing the suit for possession on the basis of title is 12 years when the possession of defendant becomes adverse. If the defendant fails to prove the plea of adverse possession, the suit for possession filed on the basis of title cannot be stated to be barred by limitation. The Hon'ble Apex Court in case **Indira Vs. Arumugam 1999(1) R.C.R (Civil) 609** has laid down as under:-

“It is, therefore, obvious that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence unless the defendant proves adverse possession for the prescriptive period, the plaintiff cannot be non-suited.”

24. In case **Deva (dead) Thr. L.Rs Vs. Sajjan Kumar (Dead) By L.Rs 2004(1) PLR 657**, the Hon'ble Apex Court has again reiterated the legal position as under:-

“The plaintiff's suit is not merely based on his prior possession and subsequent dispossession but also on the basis of his title to Survey No. 452. The limitation for such a suit is governed by Article 65 of the Limitation Act of 1963. The plaintiff's title over the encroached land could not get extinguished unless the defendant had prescribed title by remaining in adverse possession for a continuous period of 12 years.”

25 Thus, in view of the aforesaid consistent ratio of law, the title of the plaintiff cannot get extinguished unless the defendant had remained in adverse possession for continuous period of 12 years. In the instant

case, as already discussed, the defendants have failed to establish their plea of adverse possession. So, the suit filed by the plaintiff on the basis of title cannot be stated to be barred by limitation.

26. As a sequel to my aforesaid discussion, the plaintiff has rightly been held entitled for the decree for possession of the property in dispute on the basis of title. Thus, there is no perversity in the approach of the Courts below to invite any interference by this Court while exercising the limited powers under Section 100 CPC.

27. Resultantly, the present appeal having no merits is hereby dismissed with no orders as to costs.

March 17, 2016

s.khan

(DARSHAN SINGH)
JUDGE