

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2275 of 2012 (O&M)

Date of Decision: 25.10.2016

Sahab Singh and another

... Appellants

Vs.

Sunil @ Sonu and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Alok Jain, Advocate,
for the appellants.

Mr. Ramesh Hooda, Advocate,
for the respondents.

Amol Rattan Singh, J.

This is the second appeal of the plaintiffs who had filed a suit seeking a declaration to the effect that they have become owners of the suit property by way of adverse possession. They also sought a consequential relief of permanent injunction, restraining the respondents-defendants (hereinafter to be referred to as the defendants), from interfering in their peaceful possession over the suit property.

As per the facts, taken from the judgments of the Courts below, the plaintiffs' case was that they are co-owners of land comprised in khewat no.71, khatoni no.114, and of the killa numbers as were given in the plaint, the total land measuring 42 kanals 2 marlas, in village Palra, Tehsil and District Sonipat.

The father of the plaintiffs, Sanwal Ram, was stated to have entered into possession of the suit land in the Rabi season, 1965, and was recorded in the revenue record as “Billa Lagan Ba Vajeh Nau Tor”. He is stated to have remained in possession till he died on 11.01.1996, after which the plaintiffs came into possession of the suit land. It was further contended that their possession was open, hostile and continuous but otherwise peaceful and uninterrupted, to the knowledge of everybody including the defendants and therefore, it was hostile to the defendants. Consequently, it was claimed that after 12 years of the possession of the father of the plaintiffs, with the continued possession of the plaintiffs themselves, they had become owners in possession of the suit land by way of adverse possession.

Yet further, it is contended that their father had made the suit land cultivable by spending a huge amount on it and that neither their father nor they had paid any rent to the defendants, or anybody else, for occupation of the land.

It was also contended that the suit had been filed in a representative capacity, on behalf of other proprietors of the village and that though the plaintiffs had requested the defendants to admit their claim, they had refused to do so. Consequently, the suit was filed on 29.03.2000.

(It is to be noticed here that though in the judgment of the learned Additional Civil Judge (Civil Judge), Sonipat, it is stated that the suit was filed in a representative capacity, it was actually the five defendants who are seen to have been impleaded in a representative capacity, as is also stated in the plaint. An application allowing them to be so impleaded, was also filed by the plaintiffs, which was allowed).

2. Upon notice having been issued to them, the defendants filed a

written statement taking usual preliminary objections of maintainability etc. and on merits stating that they were owners of the suit land, with even the possession of the plaintiffs or their father denied.

In other words, the entire contents of the plaint were wholly denied by the defendants.

3. Upon the aforesaid pleadings, the following issues were framed by the learned Additional Civil Judge (Senior Division), Sonipat:-

- “1. Whether the plaintiffs have become co-owners in possession of the suit land as mentioned in para no.1 of the plaint vide adverse possession, as alleged? OPP
2. Whether the plaintiffs are entitled for permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
4. Whether the plaintiffs have no locus standi and no cause of action to file the present suit? OPD
5. Whether the civil court has no jurisdiction to try and entertain the present suit? OPD
6. Relief.”

4. The plaintiffs examined the first plaintiff as PW1, one Ram Mehar as PW2 and Surjit Singh as PW3, who all tendered their affidavits, alongwith other documents, which were exhibited as Exs. P1 to P12.

The defendants examined the first defendant, Devi Singh, as DW1, the 3rd defendant, Raghbir, as DW2, and one Ishwar as DW3, all of whom also submitted their affidavits. Documentary evidence was relied upon as Exs.D1 to D5.

By way of evidence in rebuttal, the plaintiffs wished to rely on three documents, which were only taken on record as Marks-A to C, (though

also referred to as Exhibits P-13 to P-15 by the 1st appellate Court).

5. Upon appraising the evidence and considering the pleadings and arguments, the learned Additional Civil Judge found that as regards possession, the revenue record from the years 1965-66 onwards, right till 1991-92, showed the plaintiffs' father, Sanwal Ram, to be in possession of the suit land.

However, there was no entry in the revenue record in favour of the plaintiffs even after Sanwal Rams' death and eventually, it was, therefore, held that firstly, the possession of a person claiming to be in adverse possession had to be proved strictly, open and hostile to the true owner, which was not proved in the present case.

It was further held that though the plaintiffs had pleaded adverse possession, they also claimed to be co-owners of the suit land, and further, despite stating that their possession was open and hostile against the defendants, there was not a single line in the plaint to the effect that the defendants were actually the owners of the suit property.

Hence, it was held that both the 'ingredients' required to stake ownership by way of adverse possession, i.e. recognition of the defendants' title as a true owner of the suit property, and open and hostile possession of the plaintiffs adverse to the true owner, were not proved.

6. Secondly, it was held that adverse possession is based on the presumption that the owner has abandoned the property in favour of the possessor. However, in the present case, the defendants had earlier filed a petition against the plaintiffs for non-payment of rent, which fact was admitted by the first plaintiff in his testimony as PW1. Thus, it was held that the defendants had not actually abandoned their claim to the suit property and

further, there was no evidence at all as to at what point the plaintiffs “started prescribing their title”.

Eventually, citing a judgment of this Court in **Bhim Singh and others v. Zile Singh and others** 2006(3) RCR (Civil) 97, it was held that a suit seeking a declaration of ownership on the basis of adverse possession is not maintainable when such suit is filed by the person in adverse possession and that such a plea could only be taken by that person, when the owner filed a suit seeking possession of his immovable property. It was further held by the learned Additional Civil Judge that for that reason, the plaintiffs were also not entitled to a decree of injunction.

Consequently, the suit of the plaintiffs was dismissed by that Court.

7. In the first appeal filed by them, the learned District Judge, Sonipat, after noticing the facts and considering the judgment of the learned Additional Civil Judge, as also the arguments raised before the Court, found that though DW1, i.e. defendant Devi Singh, had denied the contents of the plaint even in his affidavit, however, he admitted that the suit land had been made cultivable by Sanwal Ram but had further denied that Sanwal Ram was the father of the plaintiffs as actually Sanwal Ram had no children from his marriage. It was further found that he had testified that the possession of the plaintiffs was that of trespassers.

The second witness for the defendants, Raghbir, also though supporting the defendants' case in his affidavit, in cross-examination had admitted that Sanwal Rams' possession was about 20/25 years old and that Sanwal Ram had entered into possession of the suit land without the consent of the defendants. This witness also denied that Sanwal Ram had any children.

The 3rd witness for the defendants, Ishwar Singh, while otherwise supporting the case of the defendants, admitting the possession of Sanwal Ram in his cross-examination.

The learned first appellate Court also noticed that the defendants had tendered some documents by way of additional evidence, as regards the parentage of the plaintiffs, by way of voters lists, Exs.D1 and D2, which was controverted in rebuttal by the documents Marks-A to C, which were eventually converted into Exs.P13 to P15.

8. Citing a judgment of the Supreme Court in **Hemaji Waghaji Jat v. Bhikhabhia Khengarbhai Harijan and others** 2009 (1) Latest Judicial Reports 1444 (8C), wherein it was held that the law of adverse possession is wholly irrational, illogical and disproportionate, the learned first appellate Court held that a plea of adverse possession can never be “accepted lightly” simply because a trespasser has been in open, continuous and unlawful possession over the suit property for a period of 12 years or more.

Further citing a judgment of Supreme Court in **Saroop Singh v. Banto and others** 2006 (1) Latest Judicial Reports 115, that Court held that with the plaintiffs opting to trace back commencement of their alleged adverse possession over the suit land since Rabi 1965, they had still failed to pin point any exact date of the commencement of such possession.

It was further held that the plaintiffs were not sons of Sanwal Ram but sons of Bije as per the voter lists Exs.D1 and D2 and therefore, even their possession over the suit land could not be presumed to be lawful without even them having proved and established such possession for any length of time.

On the parentage of the plaintiffs, the learned District Judge

further found that nothing had been put to DWs1, 2 and 3 in their cross-examination, on their assertion that that Sanwal Ram had actually died without any children having been born to him.

Thus, holding that even though the plaintiffs had produced documents by way of an order passed by the Collector, Sonipat, and even though their matriculation certificate and “Scheduled Caste Certificate”, all showed them to be the sons of Sanwal Ram, such parentage could not be accepted in the face of the voter lists, Exs.D1 and D2, read with the testimony of DWs1, 2 and 3.

9. Further, the finding of the Additional Civil Judge that there was no 'revenue entry' showing possession of the plaintiffs after the death of Sanwal Ram, was upheld by the first appellate Court and as such, it was held that an essential ingredient of proving adverse possession, hostile to the true owner, was not proved.

Similarly, the finding that in the pleadings, the defendants had nowhere being recognised as the true owners, though adverse possession was claimed against them, was also upheld by the first appellate Court.

10. Consequently, the judgment of the learned trial Court was affirmed and the appeal of the plaintiffs dismissed.

11. In this second appeal, Mr. Alok Jain, learned counsel for the appellants, submitted that though a Division Bench of this Court, in a reference made to it, had held on 22.04.2016, that the plea of adverse possession can only be taken as a defence and not by a plaintiff, yet, as regards the decree of permanent injunction sought by the plaintiffs against the respondent, the Courts below had wholly erred in not decreeing the suit even to that extent, in the face of the revenue record, which showed the father of

the appellants, Sanwal Ram, to be in possession till the time of his death and thereafter, the plaintiffs remained in possession, with no entry in favour of the defendants.

Even having submitted as above, as regards the Division Bench judgment (though a copy of the judgment has not been produced, nor has a citation been given), Mr. Jain still submitted that the plea of adverse possession can be taken even by a plaintiff.

12. Learned counsel next pointed to the testimony of DW1, Devi Singh, in which though he had subsequently denied that the appellants were the sons of Sanwal Ram, he had actually at one point admitted the first appellant to be Sawal Rams' son. Mr. Jain further submitted that DW3, Ishwar Singh, in his cross-examination, also admitted the possession of the plaintiffs over the suit property after the death of Sanwal Ram, who had been handed over possession of the property for cultivating it.

Yet further, learned counsel submitted that at no stage had the defendants actually shown themselves to be in possession of the suit land, even after the death of Sanwal Ram in the year 1996 and thus, the testimony of Ishwar Singh amply proved that the appellants-plaintiff were in possession uptill the year 2006, i.e. upto the date of testimony. Subsequently also, he submitted that the possession had never been taken by the respondents-defendants. Consequently, the order of this Court dated 04.07.2012, by which notice was issued in this appeal and status quo was ordered regarding possession, ensured that they continued to be in possession even now.

13. On the other hand, Mr. Hooda, learned counsel appearing for the respondents, submitted that the suit for declaration of title on the basis of adverse possession is not maintainable, where such adverse possession is

claimed by the plaintiff. In this regard, he cited a judgment of a co-ordinate Bench in *Bhim Singhs'* case (supra).

Learned counsel further submitted that as regards permanent injunction, the suit of the plaintiff-appellants was essentially seeking a declaration of title on the ground that they had been in adverse possession of the suit land for more than 12 years. Hence, the relief of permanent injunction that they sought being only consequential to such declaration having been made in their favour by the Courts below, and such declaration not having been made in their favour, with the suit of the plaintiffs having been dismissed as being not maintainable on the ground aforesaid, Mr. Hooda submitted that the consequential relief of permanent injunction could not have been granted in any case.

In rebuttal, Mr. Alok Jain, learned counsel for the appellants-plaintiffs, points to paragraph 9 of the plaint, which is essentially the prayer clause, to submit that both the reliefs, i.e. of declaration and permanent injunction, have been prayed for separately and not in conjunction with each other.

He however submitted that, alternatively, if this Court comes to the conclusion that adverse possession is a plea that may be taken only in defence and not by a plaintiff, then the right of the appellants to take such a plea, in any suit filed by the respondents-defendants, would remain protected.

14. Having heard learned counsel for the parties and having considered the judgments of the learned Courts below, the first question which is to be determined is as to whether a plea of adverse possession could have been taken by the plaintiffs in their suit, or whether it was a plea only available to defendants in a suit filed by the plaintiffs.

In this regard, there have been various judgments holding both views, by different High Courts, including this Court. However, they need not be now referred to, in view of the ratio of the judgment in **Gurdwara Sahib v. Gram Panchayat Village Sirthala** (2014) 1 SCC 669, in which the hon'ble Supreme Court, after discussing the law on the subject, including the judgment in *Hemaji Waghaji Jats'* case (supra), eventually held that a plea of adverse possession cannot be taken by a plaintiff. The following paragraph from the said judgment needs to be cited in this regard:-

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

After observing as above, it was held by their Lordships that the observations of this Court (in the judgment impugned before the Supreme Court) refusing injunction, were beyond the scope of the appeal before this Court, such injunction already having been granted (to the appellant before the Supreme Court), vide the decrees issued by the trial Court and the first appellate Court.

Thus, while holding that a plea of adverse possession is not available to a plaintiff, however, it was held that a person in possession can nevertheless, seek a decree of permanent injunction, even if his plea of adverse possession is rejected.

15. In the light of the above, coming to the circumstances of the present case, nothing further need to be dwelled upon with regard to the plea

of adverse possession taken by the appellants-plaintiffs, as no declaration could have been granted to them, in law, even had they been found to be in such possession.

Thus, that being so, the findings of the Courts below, that adverse possession could not be proved by the plaintiffs, also cannot be sustained, in the opinion of this Court, as the plea itself was not available to the plaintiffs and the suit as regards the plea for a declaration on the basis of such adverse possession, should have been dismissed on that short ground alone, without further going into whether or not the possession, if any, of the plaintiffs, was adverse, open and hostile to the defendants or not. Consequently, even while setting aside the findings of the Courts below, that the appellants had not been able to prove their adverse possession, the dismissal of the suit of the plaintiffs by the Courts below, qua the decree of declaration that they sought, and of ownership by way of adverse possession, is upheld.

16. Coming then to the question whether the appellants-plaintiffs were entitled to a decree of permanent injunction or not.

In that regard, I am in agreement with the learned counsel for the appellants-plaintiffs that the Courts below have erred in holding that the plaintiffs could not prove their possession over the suit property. Though, essentially, even such finding has been given by the Courts below in relation to the plea of adverse possession, holding that such adverse possession could not be proved, (the plaintiffs not specifically even showing the defendants as the true owners of the property), however, qua possession simplicitor, in the opinion of this Court, the learned Court below have wholly erred in holding that the appellants were not in possession of the suit property simply because the revenue record did not reflect their possession.

It is obvious from the cross-examination of DW3, Iswhar Singh, as pointed out by Mr. Alok Jain, learned counsel for the appellants, that he admitted that the appellants-plaintiffs are in possession of the suit property after the death of Sanwal Ram, who admittedly was in possession even as per the testimonies of all three defence witnesses.

In view of the above admission by DW3, I find that there is a basis to the contention of Mr. Jain that the defendants in any case, could not even begin to prove that they were actually in possession of the suit land after Sanwal Rams' death.

However, it was for the plaintiffs to prove their possession. In that context, whether the plaintiffs were the sons of Sanwal Ram or his nephews, being the sons of his brother Bijje Singh, or otherwise related to Sanwal Ram, simply because the revenue record did not reflect possession to have passed on to them after Sanwal Rams' death, it cannot be said that they were not in actual possession of the suit property, in the face of the admission to that effect by DW3, seen with the fact that the defendants in any case were not shown to be in possession of the suit land.

Further, alongwith the aforesaid facts, no other person was shown to have been in possession of the suit land after Sanwal Rams' death. Hence, the natural inference would be that his sons/immediate relatives would step into his shoes to take possession, which, of course, can be wholly disproved by leading any evidence to the contrary, including *jamabandi/khasra girdawari* entries etc. showing that, in fact, after Sanwal Ram, some other persons came into possession of the property. No such evidence has been pointed out to this Court. Hence, I do not see how the learned Courts below held that after Sanwal Rams' death, the appellants-plaintiffs did not step into

his shoes, as regards the possession of the suit property, especially when, in fact, DW3 admitted to that fact in his cross-examination.

17. Even as regards the finding of the learned first appellate Court that the appellants-plaintiffs are not the sons of Sanwal Ram, I find it difficult to accept that finding, in the face of the fact that even as noticed by that Court itself, the matriculation certificate of the second plaintiff, Subhash Chander, showed him to be the son of Sanwal Ram. A perusal of the records of the Courts below shows that Ex.P14 is indeed a photocopy of the matriculation certificate (only the photocopies of the original record having been put up to this Court), in which he is shown to be the son of Sawal Ram.

Similarly, Ex.P15 is the “Scheduled Caste Certificate” issued by the Sub Divisional Officer, Sonapat, showing the second appellant-plaintiff, Subhash Chander, to be the son of Sawal Ram.

Hence, simply because the voter lists, Exs.D1 and D2, show them to be the sons of Bije Singh, it cannot be held to be conclusive proof in that regard.

Consequently, that finding of the learned appellate Court is set aside, but the question of the parentage of the appellants is left open to be proved/disproved in any appropriate proceedings.

18. In the light of the aforesaid discussion, it is first held that the appellants-plaintiffs could not have taken a plea of adverse possession in a suit filed by them seeking a declaration of ownership by virtue of such adverse possession; but as regards their possession simplicitor, over the suit property, the same stands proved even after the death of Sawal Ram, in the opinion of this Court, by the deposition to that effect of DW3 in his cross-examination, seen with the fact that the defendants could not prove their

possession, or that of any other person, over the suit property in any manner.

However, it is made clear that even while upholding the dismissal of the suit of the plaintiffs qua the decree of declaration sought, even though this Court has set aside the findings on the issue of adverse possession, this Court has not held that the appellants-plaintiffs had proved any such adverse possession qua the respondents-defendants. That question would remain open to be decided on its own merits, in any suit filed by the defendants or any other person claiming ownership and possession of the suit property, if any such suit is instituted.

19. Consequently, the present appeal is partly allowed while upholding the dismissal of the suit of the appellants-plaintiffs by the Courts below as regards the issue of a decree of declaration in their favour, with the suit now partly decreed in favour of the plaintiffs, as regards the prayer made by them seeking a decree of permanent injunction against the defendants. Their possession over the suit property would, thus, not be disturbed, except in due course of law.

The parties are left to bear their own costs.

A decree-sheet be prepared accordingly.

(AMOL RATTAN SINGH)
JUDGE

October 25, 2016
dinesh

Whether reasoned/speaking	?	Yes/no
Whether reportable	?	Yes/no