

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. RSA Nos.4867 of 2012
Date of Decision: 01.02.2016

Smt. Shashi Bala Bhatia

.....Appellant

Vs

Lal Chand Sachdeva and others

.....Respondents

2. RSA Nos.4868 of 2012

Smt. Shashi Bala Bhatia

.....Appellant

Vs

Lal Chand Sachdeva and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Adarsh Jain, Advocate
for the appellant.

Mr. Kulbhushan Sharma, Advocate
for respondents No.1 to 5.

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

RAJ MOHAN SINGH, J.

[1]. Vide this common judgment RSA Nos.4867 and 4868 of 2012 are being decided as both these appeals have arisen out of common facts.

[2]. In RSA No.4867 of 2012 suit for declaration and

permanent injunction filed by plaintiffs/respondents was in issue whereas in RSA No.4868 of 2012 suit for permanent injunction filed by appellant-Shashi Bala Bhatia was in issue. For the sake of brevity, facts are being extracted from RSA No.4867 of 2012

[3]. Defendants-Shashi Bala Bhatia is in second appeal against the judgment and decree dated 21.08.2012 passed by Additional District Judge, Palwal whereby judgment and decree dated 22.04.2010 passed by Additional Civil Judge (Sr. Divn.) Palwal was set aside and suit of the plaintiffs was decreed, declaring the sale deed No.3781 dated 15.09.2000 executed by defendants No.2 to 7 in favour of defendant No.1 and consequent mutation No.2386 dated 09.10.2000 to be illegal, null and void and not binding upon rights of the plaintiffs.

[4]. Plaintiffs filed suit for declaration and permanent injunction claiming themselves to be the owners in joint possession of land measuring 5 *Marlas* (hereinafter called as the 'suit property'). Sh. Kotu Ram predecessor-in-interest of defendants No.2 to 7 was the owner of land measuring 2 *Biswas* and he sold the same to the father of the plaintiffs on 19.02.1958 for a consideration of Rs.97/-. A writing was executed in *Bahi* which was maintained in the ordinary course of business by father of the plaintiffs. Father of the plaintiffs was also owner in possession of adjoining *Khasra* No.1629 and that

was the reason why Kotu Ram sold the adjoining *khasra* number to the father of the plaintiffs. The suit property was being used by the plaintiffs' father for parking his trucks. Since the time of purchase i.e. on 19.02.1958, plaintiffs continued to be owner in possession of the suit land.

[5]. Plaintiffs alleged that defendant No.1 and her husband used to deal in properties and in collusion with defendants No.2 to 7, they got a sale deed executed in favour of defendant No.1, who got the mutation No.2386 dated 09.10.2000 sanctioned in her favour.

[6]. Plaintiffs further alleged that the defendants after execution of sale on 19.02.1958 had no right, title or interest in the suit property as Kotu Ram had lawfully alienated the land to the father of the plaintiffs. *Bahi* was maintained by the father of the plaintiffs in ordinary course of business and he submitted joint plan of *Khasra* No.1617 (purchased land) and *Khasra* No.1629 (land under ownership of the father of the plaintiffs) to the Municipal Committee, Palwal, for getting the same sanctioned, which was sanctioned on 23.08.1965. Since then the plaintiffs continued to enjoy the peaceful possession of the suit property. The sale deed dated 15.09.2000 was claimed to be *sham* and bogus transaction as no consideration was passed over to Kotu Ram and the sale deed did not create any embargo

on the right, title or interest of the plaintiffs in respect of suit property.

[7]. The consequent mutation was also claimed to be illegal, null and void. Father of the plaintiffs got constructed boundary wall on the entire land including the suit property in the year 1958 itself and after his death mother of the plaintiffs Asha Bai Sachdeva let out the suit property to various persons from time to time. The ownership of the plaintiffs since the time of purchase was open, continuous, un-interrupted and it was to the notice and knowledge of the defendants. In alternative plaintiffs claimed that they become owners by way of adverse possession.

[8]. Defendants contested the suit on all counts by denying the ownership and possession of the plaintiffs. Sale deed dated 19.02.1958 by Kotu Ram was denied. Defendants claimed to have purchased the suit property as per sale deed dated 15.09.2000 for a consideration of Rs.75,000/-. *Bahi* entry was claimed to be fabricated. Defendants further alleged that the plaintiffs never remained as Transporters and never used the suit property as parking site of the vehicles.

[9]. Defendants alleged that they are in actual physical possession of the suit property and mutation was lawfully entered and sanctioned in favour of defendant No.1. The sale

deed in favour of plaintiffs was claimed to be *sham* and bogus transaction. The factum of raising boundary wall was also denied.

[10]. Both the parties went on trial on the following issues:-

- “1. Whether the plaintiffs are co-owners in possession of the suit land? OPP*
- 2. Whether the sale-deed dated 15.09.2000 and mutation No.2386 dated 09.10.2000 are illegal, null and void and not binding on the rights of the plaintiffs? OPP*
- 3. Whether the plaintiffs are entitled for decree for declaration and permanent injunction? OPP*
- 4. Whether the suit is stayed under Section 10 of the CPC? OPD*
- 5. Whether the plaintiffs have no locus standi and cause of action to file the present suit? OPD*
- 6. Whether the suit is not maintainable in the present form? OPD*
- 7. Relief.”*

[11]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[12]. Trial Court dismissed the suit vide judgment and decree dated 22.04.2010. On appeal, lower Appellate Court accepted the appeal vide judgment and decree dated 21.08.2012.

[13]. Appellant has framed the following substantial

questions of law in para no.24 of grounds of appeal:-

- “i) Whether mere writing on a piece of paper claimed to be Bahi leaf, proved sale of property and transfer of immovable property without production of the Bahi Book?*
- ii) Whether the alleged writing regarding transfer of ownership has been proved by establishing the transaction to be one of sale?*
- iii) Whether the alleged writing is proved to have been produced from proper custody?*
- iv) Whether the plaintiffs have proved that the suit property is the property which is alleged to be purchased on 19.2.1958?*
- v) Whether the defendant is proved to be bonafide purchaser of the suit property for valuable consideration and without notice of the alleged sale made on 19.2.1958 as the alleged sale has never seen the light of day for a period of more than 40 years till filing of the present suit in the year 2004?*
- vi) Whether the plaintiff- respondents ever asserted their ownership or possession over the suit property?*
- vii) Whether mere parking of a truck or placing of bricks proves possession?*
- viii) Whether the learned lower appellate court has not misread and misconstrued the evidence produced on record and whether the same is not a perverse approach and has rendered the*

impugned judgment and decree to be illegal?

ix) *Whether in the facts and circumstances of the case the learned lower appellate court was not justified in reversing the well reasoned and well considered judgment and decree passed by the learned trial Court?”*

[14]. I have heard learned counsel for both the parties.

[15]. Learned counsel for the appellant argued that only a leaf has been produced on record from the *Bahi* allegedly maintained in due course of business. The site plan got sanctioned by the plaintiffs allegedly from the Municipal Committee, Palwal did not correspond to any entry in municipal record regarding ownership. The construction as alleged was not on the basis of any sanctioned plan, nor the property was shown in terms of producing any record of Income Tax Returns or Wealth Tax Returns. The defendant No.1/appellant claimed herself to be *bona fide* purchaser as the vendor was duly shown owner of the property in question in the revenue record till the date of purchase by the defendant No.1/appellant, nor any litigation in respect of the plot was pending at the relevant time.

[16]. Learned counsel for the appellant further argued that no record of consolidation has been produced on record in order to connect *Khasra* No.1617 with corresponding old *khasra* number 5571 in the revenue record existing in the year 1958.

There is no connectivity of the *khasra* numbers, nor any evidence has been produced except statement of DW-2 Khajan Singh, Patwari, who has produced field book only which is not a document of consolidation as it was prepared at a later stage.

[17]. According to learned counsel for the appellant, no consolidation took place, therefore, question of consolidation record does not arise and connectivity of old *Khasra* No.5571 with that of new *Khasra* No.1617 does not arise at all, nor there is any *iota* of evidence on record to presume such a fact. The alleged un-registered sale dated 19.02.1958 was in respect of *Khasra* No.5571 and in the absence of any cogent evidence viz. consolidation record, no such presumption can be drawn on the basis of field book Ex.PW-3/A.

[18]. Learned counsel for the appellant also submitted that the sale was allegedly shown in the *Bahi* entry which was allegedly maintained in due course of business. The presumption attached to such sale could have been tested in terms of Section 34 of the Evidence Act, however no original *Bahi* has been produced on record. Only a leaf of alleged *Bahi* has been produced. No preceding or subsequent page of such leaf has been produced on record in order to show that leaf in question was the part of *Bahi* which was maintained in due course of business. The continuity of transaction being part of

valid account book has to be produced. The original *Bahi* has not been produced on record, nor the attesting witness have been examined.

[19]. Learned counsel further highlighted that onus to prove issue No.1 was on the plaintiffs. In the absence of *Naksha Haqdaran, Khatoni Paimaesh, Khatoni Istemal* (documents of consolidation), no connectivity of old *Khasra* No.5571 to *Khasra* No.1617 can be presumed only on the statement of DW-2 Khajan Singh, Patwari. The field book is the first document prepared after the consolidation and this document in itself is not a document of consolidation for connecting the old *khasra* number with that of new *khasra* number. The Patwari while appearing as DW-2 has stated that old *khasra* number of 1617 was 5571 and mutation Ex.P-3 was issued by him.

[20]. In the suit filed by the appellant-Shashi Bala Bhatia, the Courts below deliberated upon the issue whether Shashi Bala Bhatia was owner in possession of the suit or not on the basis of sale deed dated 15.09.2000 for a consideration of Rs.75,000/-. In the said suit writing dated 19.02.1958 Ex.DW-5/A was produced with reference to witnesses Chokha Ram DW-5 and Kishan Chand DW-6, who had identified the signatures of their father on the writing. The trial Court commented upon the factum of producing one page of *Bahi* and did not place

reliance on such leaf of *Bahi*. The possession of Shashi Bala Bhatia was not found over the suit property. The photographs placed on record in the said suit pointed out that the suit property/land was used as a site for parking the truck and some bricks were also lying therein. Possession of Shashi Bala Bhatia was not corroborated by any witness, nor she could show as to how she got possession of the suit property, neither she got possession of the suit property. She even could not demonstrate that the suit property was not adjoining to the land belonging to the opposite party. Taking the stock of the situation, the suit for permanent injunction filed by the appellant/Shashi Bala Bhatia was dismissed and the same was upheld by the lower Appellate Court. Said judgment and decree is the subject matter of challenge in RSA No.4868 of 2012.

[21]. In a suit for declaration and permanent injunction the plaintiffs have to prove their title on the basis of un-registered sale deed dated 19.02.1958 from Kotu Ram in respect of *Khasra* No.5571 which was allegedly assigned *Khasra* No.1617 after consolidation. The plaintiffs by pleading in para no.1 of the plaint stated that the suit land was a piece of land which was purchased by a sale deed for a consideration of Rs.97/-. A writing was made in the *Bahi* which was allegedly maintained in usual and ordinary course of business by father of the plaintiffs.

The possession was also delivered. At the end, in alternative plaintiffs also claimed that they have become owner by way of adverse possession.

[22]. The entire case of the plaintiffs rested upon the title derived from un-registered sale deed and the connectivity of old *khasra* number with that of new *khasra* number. The title as claimed by the plaintiffs was on account of sale deed written in *Bahi*, which was required to be produced on record and evidence must come in respect of maintenance of such *Bahi* in usual and ordinary course of business.

[23]. Even in the suit for permanent injunction filed by Shashi Bala Bhatia, she took plea of title based on leaf of the *Bahi* which was not entertained by the Courts. On the basis of such alleged title, site plan was got approved from Municipal Committee, Palwal on 24.08.1965. Admittedly no *Bahi* has been produced on record, nor any entry of ownership was incorporated in the record of Municipal Committee, neither the same has been produced on record in the present case. No evidence viz. Income Tax Returns or Wealth Tax Returns has been produced on record. The attesting witnesses of the entry dated 19.02.1958 have not been examined as they were already expired. Chokha Ram PW-3 has been examined, who is son of scribe Mohan Lal. Kishan Chand PW-4 has been examined who

is son of Sharu Ram one of the attesting witness. He has close relation with plaintiffs and he has admitted that Lal Chand is son of his maternal uncle.

[24]. Plaintiff No.1 Lal Chand has not made any statement regarding Income Tax Return or Wealth Tax Returns and stated that the land is a plot with boundaries, but there is no house. Though the plaintiffs have claimed the old *khasra* number of the suit property as 5571 and new *khasra* number assigned to it is 1617.

[25]. For want of evidence trial Court did not advert to the claim of the plaintiffs, however the lower Appellate Court while allowing the appeal has not adverted to any connectivity between *khasra* number 5571 with *khasra* number 1617 except the field book which is not a record of consolidation. The statement of Patwari can only be read in the context that he has prepared mutation Ex.P-3 and new *Khasra* No.1617 is corresponding to old *Khasra* No.5571. This solitary statement could not find favour in terms of any material on record. This fact coupled with the leaf of *Bahi* entry and alternate plea of adverse possession would make the plaintiffs high and dry for want of lawful title.

[26]. The *Bahi* has not seen the light of the day, nor the title was given effect in the record of Municipal Committee or in the

revenue record in *jamabandi* entries for the years 1974-75, 1996-97 and 2001-02. At the time of purchase of the suit property on 15.09.2000, the vendee could have verified the title of the vendor in the revenue record and in the municipal record. Since there was no title in favour of the plaintiffs in the municipal record as well as in the revenue record, therefore, defendant Shashi Bala Bhatia or her predecessor purchased the same on reasonable verification. Appellant can be held to be *bona fide* purchaser having purchased the property after proper verification and, therefore, benefit of Section 64 of Transfer of Property Act can be given to the appellant.

[27]. Chokha Ram was the scribe, who has been examined and son of one of attesting witness Mohal Lal has also been examined. The claim of the plaintiffs that after sanctioning of site plan by the Municipal Committee and examination of such witnesses, possession would be deemed to be that of plaintiffs as construction was raised by them after sanctioning of the site plan. It is apparent that the Municipal record did not show title of the plaintiffs in respect of suit land, nor the sale deed dated 19.02.1958 was ever given effect in the revenue record. The presumption attached to revenue record cannot be rebutted merely by alleging that construction exists on the site. The declaration of title over the suit property is the primary issue

involved in the present cases.

[28]. For want of connectivity between old *Khasra* No.5571 and *Khasra* No.1617, the alleged khasra number is not proved to have been purchased by the plaintiffs. Secondly, the title on the basis of un-registered sale deed dated 19.02.1958 cannot be passed over to plaintiffs for want of production of original *Bahi* which cannot satisfy the requirement of law in terms of Section 34 of the Indian Evidence Act. Thirdly, the only leaf produced out of *Bahi* cannot prove the transaction maintained in usual and ordinary course of business.

[29]. The scribe and son of one of the attesting witness as discussed in preceding para are not sufficient to hold genuineness of the sale deed dated 19.02.1958 as son of the Sharu Ram i.e. Kishan Chand has admitted that plaintiff No.1 Lal Chand is the son of his maternal uncle. In the absence of any cogent evidence of veracity like Income Tax Returns or Wealth Tax Returns, the case of the plaintiffs lacks consideration. Plaintiffs were required to stand on the strength of their own merits of the case. The alternate prayer made by the plaintiffs in respect of adverse possession has to be taken to be an admission of title in favour of opposite party.

[30]. The submission made by the respondents is only based on field book which was prepared after consolidation and the

Patwari while appearing in the witnessbox has admitted that corresponding old *khasra* number of 1617 was 5571. Even if the Patwari has not been cross-examined, the fact remains that the case of the plaintiffs is proved to be lacking on account of fact that no *Naksha Haqdaran, Khatoni Paimaesh, Khatoni Istemal* were produced by the plaintiffs on record. Field book is not a document of consolidation, rather it was prepared after consolidation and solitary statement of Patwari in the context of preparation of mutation based on record does not go in a long way to prove the connectivity of old *khasra number* viz.-a-viz. new *khasra* number.

[31]. Since document of title i.e. sale deed has not been proved on record in the context of proving *Bahi* in accordance with law, therefore, in considered opinion of this Court the substantial questions of law as formulated need to be considered.

[32]. The cumulative effect of the questions is that *Bahi* book having not been produced on record cannot prove the leaf out of it to be an entry usually maintained in due course of business. Therefore, factum of sale deed cannot be presumed to have been executed. Attesting witnesses have already expired. Son of one of attesting witness admittedly proved close relationship between him and the plaintiff No.1 Lal Chand. For want of

evidence of execution of sale deed dated 19.02.1958 and plea of adverse possession having been taken in alternative have cumulative effect in deciding questions No.(i), (ii), (iii) and (iv) since the factum of sale deed dated 19.02.1958 was never incorporated in the municipal record, nor it was given effect in the revenue record.

[33]. The sale deed dated 19.02.1958 in the form of *Bahi* entry was not produced on record, therefore, alleged long possession on the basis of such entry has to be satisfied.

[34]. A mere possession or permissive possession does not demonstrate spectrum of adverse possession. For claiming adverse possession, the plaintiffs must prove that their possession, is “*nec vi, nec clam, nec precario*”, i.e. peaceful, open and continuous. The possession should be actual, open, notorious, exclusive and continuous for the required period as provided in law.

[35]. The necessary ingredients of adverse possession as enumerated in **Karnataka Board Wakf Vs. Government of India, 2004(2) RCR (Civil) 702** are that the adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. A party claiming adverse possession must prove that his possession is “*nec vi, nec clam, nec precario*” i.e peaceful, open and continuous and it should 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 dispossession of the original owner and is actual, visible, exclusive, hostile and continues over the statutory period.

[36]. Plea of adverse possession is not a pure question of law, rather it is a mixed question of law and facts. A person who claims adverse possession, must 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 other party (d) How long his possession had continued; (e) His possession was open and undisturbed. Plea of adverse possession has no equities rather this right has some instinct of piratical rights. The person has to plead from what date his possession became adverse, and he must disclose the necessary ingredients in his pleadings.

[37]. For want of proof of such ingredients, the possession over the suit property on such premise cannot be held to be sufficient. Moreover, plaintiffs claimed such a relief on the basis of adverse possession cannot maintain the suit, therefore, question No.(v) has to be held in the manner that plaintiffs cannot derive any benefit out of plea of adverse possession and defendant No.1 having verified the title in terms of municipal

record and revenue record has to be held as *bona fide* purchaser. Questions No.(vi) and (vii) are not the questions of law much less substantial questions of law.

[38]. In the light of aforesaid discussion, it can be safely held that the findings recorded by the lower Appellate Court are not in consonance with the proper reading of the material on record, therefore findings are held to be the result of misreading of evidence. Questions No.(viii) and (ix) have to be answered in the aforesaid context.

[39]. Taking stock of entire facts and circumstances, this Court feels that plaintiffs have failed to prove their case on the touchstone of the title and claim of possession on such title also deserves to be negated.

[40]. In the light of aforesaid, impugned judgment and decree dated 21.08.2012 passed by the lower Appellate Court in RSA No.4867 of 2012 is hereby set aside thereby dismissing the suit of the plaintiffs with no order as to costs.

[41]. Since the plaintiffs have failed to prove their title to the suit land and have based their claim on the basis of Adverse Possession as well, therefore, their possession cannot be held to be permissive possession. The Courts below in RSA No.4868 of 2012 have held the present plaintiffs to be in possession while dismissing the suit of present appellant for Permanent

Injunction. In view of above, it can be held that the present appellant is entitled to take possession of suit property in due course of law. With this observation RSA No.4868 of 2012 is also allowed.

February 01, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**