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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 12.12.2016

1.

RSA-711-2012 (O&M)

Randhir Singh and others

... Appellants

Versus

Maman and others

... Respondents

2.

RSA-3769-2012 (O&M)

Maman and another

... Appellants

Versus

Randhir and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate
for the appellant(s) in RSA-711-2012 and
for the respondent(s) in RSA-3769-2012.

Mr. Surya Kant Gautam, Advocate
for the respondent(s) in RSA-711-2012 and
for the appellant(s) in RSA-3769-2012.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals, one bearing
RSA No.711 of 2012 titled as **“Randhir Singh and others V/s Maman and
others”** at the instance of the appellant(s)-defendant(s) and the other bearing
RSA No.3769 of 2012 titled as **“Maman and another V/s Randhir and
others”** at the instance of appellant(s)-plaintiff(s), arising out of the decision

of Civil Suit bearing No.110 of 2000, wherein, the plaintiff(s), who are the appellant(s) in RSA No.3769-2012 and the respondent(s) in RSA-711-2012, instituted the suit seeking following relief, which had been dismissed by both the Courts below:

“Decree for declaration to the effect that the revenue entries in jamabandi in Khana No.5 regarding Kastkar since, 1972-73 to till further regarding the land in dispute as detailed given below are illegal, null, void ab initio and not binding upon rights of the plaintiffs and also the possession over agricultural land in dispute of the plaintiffs since 1984-85 in the capacity of Basara Malkana Billa Malkana Bai Waja Kabja Derina, hence, the plaintiffs be declared owners of the disputed land with consequential relief of permanent injunction restraining the defendants forever from alienating the agricultural land in dispute by sale, mortgage lien or other whatsoever and be also restrained them from interfering in peaceful possession of plaintiffs.”

But, the lower Appellate Court ordered for restoring the possession and it is, in this background of the matter, the appellant(s)-defendant(s) had to file the appeal bearing **RSA No.711 of 2012**.

Mr. C.B. Goel, learned counsel appearing on behalf of the appellant(s)-defendant(s) in RSA-711-2012 and for the respondent(s) in RSA-3769-2012, submits that the suit, aforementioned, was filed on the premise that Chandgi Ram, the father of the plaintiff(s), was in cultivating possession over the agricultural land since 1884-85 in the capacity as *Basara Malkana Billa Malkana Bai Waja Kabja Derina*, without any objection from any person and relied upon the *Khana* No.5 of the jamabandi for the year 1967-68.

He further submits that the relief of possession and permanent injunction had also been sought. As per the averments in the plaint, it was stated that entries in *Khana* No.5 of the jamabandi for the year 1972-73 had been found to be illegal, null and *void ab initio* and not binding upon the rights because it had been in their possession and instituted the suit on 23.12.2000 and also sought alternative relief of declaration to the effect that they have become owners by way of adverse possession. On the contrary, the appellant(s)-defendant(s) had also instituted a civil suit for injunction against the plaintiff(s) which was decreed by both the Courts below and the appeal bearing **RSA No.2193 of 2006** at the instance of the plaintiff(s) herein, has already been dismissed vide order dated 21.08.2007. In support of his contentions, he relies upon the *ratio decidendi* culled out in the Judgment rendered by the Hon'ble Division Bench of this Court in **RSA No.2561 of 1985** titled as **“Vijay Bhawar and others V/s Ajaib Singh (deceased) through his LR” decided on 08.12.2014**, as to whether by taking the aid of the provisions of Article 65 and Section 27 of the Limitation Act, the plaintiff(s) can, in affirmative, set the plea of adverse possession or not, to contend that the findings had been rendered against such person.

He further submits that the plea under Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 and all other pleas, had been rendered, by the trial Court, in his favour and affirmed by the lower Appellate Court, but the lower Appellate Court found that since, in a proceeding initiated under Section 145 of the Code of Criminal Procedure, Receiver under Section 146 of the aforementioned provisions of law was

appointed on 17.04.2001 and erroneously ordered for restoration of the possession by taking in accordance with law. The possession was handed over on 07.07.2003. The aforementioned findings have been assailed in RSA-711-2012.

He further submits that the suit was also barred by law of limitation as the entries sought to be corrected were of 1972-73, whereas the suit was filed in December 2000 and in this regard, drawn the attention of this Court to Para No.8 of the plaint, whereas the alleged cause of action purported to have been arisen in November 2000. For the sake of brevity, Para No.8 of the plaint reads thus:-

“That the cause of action arose in favour of the plaintiffs and against the defendants since the month of November 2000, when the plaintiffs came to know regarding change in revenue record and also since change of record. Moreover, when the defendants threatened for alienating the land in dispute on 20.12.2000 and a continuing one.”

thus, urges this Court for setting aside the findings of the lower Appellate Court viz-a-viz the restoration of the possession.

Per contra, Mr. Surya Kant Gautam, learned counsel appearing on behalf of the respondent(s)-plaintiff(s) in RSA-711-2012 and for the appellant(s) in RSA-3769-2012, submits that there is no limitation to seek the correction in the revenue entries as per the provisions of Article 56 of the Limitation Act. The plaintiff(s) acquired the knowledge of entries only in the month of November 2000, when there was a threat of alienation and accordingly, the suit filed in December 2000 cannot be said to be barred by law of limitation. In support of his contentions, he relies upon the *ratio decidendi* culled out by this Court in **“Narani Devi and others V/s Surinder**

Kumar and others” 2004 (2) RCR (Civil) 820.

He further submits that the prime relief was to seek the declaration for setting aside the entries and secondary relief was for adverse possession in an injunction suit, though, had been decreed in favour of the appellant(s)-defendant(s), but the issue of ownership and possession was left open and therefore, dismissal of the regular second appeal at the instance of the plaintiff(s) pales into insignificance, thus, urges this Court for affirming the findings under challenge

In rebuttal, Mr. C.B. Goel, has drawn the attention of this Court to the findings arrived at by this Court in the order dated 21.08.2007 passed in **RSA No.2193 of 2006** titled as **“Maman and another V/s Randhir Singh and others”** wherein, there is a categoric finding that the plaintiff(s) herein and defendant(s) therein, failed to prove the ownership and possession over the suit property.

I have heard heard the learned counsel for the parties and appraised the paper-book and of the view that there is merit and force in the submissions of Mr. C.B. Goel, as the lower Appellate Court, in my view, has committed perversity and fallacy in ordering for restoration of the possession. As per the *ratio decidendi* culled out in the Judgment rendered by the Hon'ble Division Bench of this Court in **“Vijay Bhawar's case** (supra), wherein, it has been held that the suit of such nature by taking the aid of the provisions of Section 27 and Article 65 of the Limitation Act at the instance of the plaintiff, in affirmative, is not maintainable. For the sake of brevity, the finding arrived at by the Hon'ble Division Bench of this Court in **Vijay Bhawar's case** (supra) reads thus:-

14. Thus, a short but a significant question that arises is, whether on an extinguishment of such a right of a true owner in the property, a right accrues or is conferred on the adverse possessor to enable him to claim relief under Section 34 of the Specific Relief Act. To our minds, the answer is NO. In our opinion, Section 27 and Article 65 have to be read in conjunction and not in isolation. An isolated reading of Section 27 may not bring to fore the real and full meaning of the phrase “right to such property shall be extinguished”. A conjoint reading of both, the Section as well as the Article, clearly postulate that a suit for possession based on title can be filed within twelve years from the date when the possession of the defendant became adverse to the plaintiff and if any such suit is not filed within such prescribed period, right of such person to the property shall be extinguished. Evidently, the right of such person to obtain possession has been extinguished but his right to the property has not been. The right to a property and right to regain possession of the same are two different things. The Hon'ble Apex Court in **“Tribhuvanshankar V/s Amrutlal” 2014 (1) RCR (Civil) 206** has clearly mandated that Section 28 of the Limitation Act, 1963, merely declares when does the right of a person out of possession is extinguished, but this provision does not confer any title on the person who has been in adverse possession for a certain period. There is no law which provides for 'conferral of title' as such on a person who has been in adverse possession for whatever length of time. When it is said that the person in adverse possession 'has perfected his title', it only means this. It does not mean that it confers ownership or title on the adverse possessor. If that is so, then the question arises whether the adverse possessor who has not been conferred any right in the property, contrary to the true owner who's right to seek possession stood extinguished, can file a suit under

Section 34 of the Specific Relief Act to declare him owner of the property on the basis of adverse possession ? Section 34 of the Specific Relief Act reads as under :-

“34. Discretion of court as to declaration of status or right –

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief :

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

All what the afore reproduced provision envisage is that a person, who is entitled to any right as to any property, may institute a suit against any person denying or interested to deny his title to such property to declare his title in the property. But as indicated above, adverse possessor has no title or ownership in the property. In fact, the whole concept of adverse possession is in denial of title. It does not contemplate acquisition of title by prescription. He has right to remain in possession of the property, if his possession is adverse to the true owner, who is not entitled to take possession of the property after the prescribed limit under Article 65 of the Limitation Act, 1963. If a suit is filed by the adverse possessor under Section 34 of the Specific Relief Act, the court will not examine whether the right of the defendant is within the period of limitation or whether it has extinguished. The court will examine whether the plaintiff who filed suit on the basis of adverse possession has any title to the property. Therefore, just because the plaintiff filed the suit denying title of the defendant and setting up his own title on the basis of adverse possession,

the court would not decide, whether the defendant had lost his right to regain possession of the property. In our opinion, Section 27 of the Limitation Act, 1963, though extinguishes the right of a person to gain possession of the property, if he had failed to file the suit within twelve years specified under Article 65 of the Act, but this Section and the Article does not, on the extinguishment of such right vest title in favour of the adverse possessor to file any such suit under Section 34 of the Specific Relief Act. He has to establish his own right, tile to the suit property. In our view, the adverse possessor having no right in the property cannot maintain a suit under Section 34 of the Specific Relief Act. There may not be any case wherein the title can be set up or declared based on merely adverse possession. In our view, a suit merely based on adverse possession or to call it a title by adverse possession is not maintainable. Such a defence is open to the defendant by virtue of Article 65 of the Limitation Act, 1963 to set up against the owner seeking the relief of possession based on title against a person in adverse possession. Declaration of title presupposes that a title or ownership exist in the plaintiff, but if a person neither has the ownership nor title, what declaration can he ask for.

15. In view of the above, in none of the judgments cited by learned counsel for the respondent (plaintiff), the proposition of law was directly in issue. Thus, we are of the opinion that no declaration can be sought by a plaintiff with regard to ownership on the basis of adverse possession as such plea is available only to defendant.

16. The reference is answered accordingly, and the main appeal will go back to the learned Single Judge for a decision on merits.

Though, both the Courts below decided Issue No.7, regarding suit being barred by law of limitation or not, by relying upon the

entries of the revenue record subsequent to the filing of the suit.

I do not deem it appropriate to delve upon the applicability of the Limitation Act as the interpretation of the acquisition of knowledge depends upon the facts and circumstances of each case.

The plaintiff has not been able to bring on record the evidence with regard to the possession of Chandgi Ram. The correction was made way back in the year 1972-73. The relief of declaration qua ownership on the basis of adverse possession is not maintainable.

This Court called upon Mr. Surya Kant Gautam, to apprise whether the plea of adverse possession in affirmative in a suit for injunction can be taken and the answer was in negative. This Court while dismissing the the appeal bearing No.2193 of 2006 observed as under:-

“This contention of the learned counsel for the appellants does not arise. Learned trial Court on appreciation of evidence was right in coming to the conclusion that the appellants have failed to prove their ownership and possession over the suit property. Merely because another suit is pending between the parties, cannot be a ground to reverse the finding recorded by the learned Courts below on appreciation of evidence. As regards the second contention the same has been noticed to be rejected as no such plea of repossession was raised before the Courts below.

No ground is made out which may call for interference in the impugned judgments and decrees by this Court.

No question of law, much less, substantial question of law arises in this appeal for consideration of this Court.

Dismissed.”

Thus, the finding of the lower Appellate Court in restoring the possession is not sustainable as the possession had been taken in accordance

with law in a proceeding initiated under Section 146 of the Criminal Procedure Code, particularly once the plaintiff(s) has failed to establish their ownership, as sought to be projected.

There is another aspect of the matter that as per the order dated 02.09.2002 (Ex.D-20) passed by the Collector, whereby the application dated 07.11.2000 prior to filing of the civil suit at the instance of the plaintiff(s) seeking correction of the Khasra number, aforementioned, had been dismissed. Though, the trial Court had taken the said aforementioned date to be reckoning date for a cause of action, but that was subsequent to one filing of the suit.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213”**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **“Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others” 2001(4) SCC 262**, on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of

five learned Judges of the Hon'ble Supreme Court in “Pankajakshi 's case
(supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled.” [at paras 27 - 29]”

27. *Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure*

(Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeals, aforementioned.

For the foregoing reasons, the findings of the lower Appellate Court rendered in **RSA-711-2012** qua restoring the possession have been set aside and rest of the findings are upheld. In fact, the findings on all issues rendered in favour of the appellant(s)-defendant(s) by the trial Court are restored.

Accordingly, the appeal bearing **RSA No.711 of 2012** is allowed and the other appeal bearing **RSA No.3769 of 2012** is dismissed.

12.12.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No