

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

**R.S.A No.194 of 2013 (O&M)
Date of decision :17.10.2016**

Jagir Singh

..... Appellant

Versus

Shangara Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Rakesh Kumar, Advocate
for the appellant.

DARSHAN SINGH,J

CM No. 525-C of 2013

This application has been moved under Section 151 of the Code of Civil Procedure, 1908 for condonation of delay of 433 days in re-filing the appeal.

Heard.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 433 days in re-filing the present appeal is hereby condoned.

CM No. 526-C of 2013

This application has been moved under Section 151 of the Code of Civil Procedure, 1908 for condonation of delay of 141 days in filing the appeal.

Heard.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 141 days in filing the present appeal is hereby condoned.

R.S.A No. 194 of 2013(O&M)

The present appeal has been preferred against the judgment and decree dated 12.01.2011 passed by the learned Additional District Judge, Jalandhar, whereby the appeal filed by appellant-defendant Jagir Singh against the judgment and decree dated 06.12.2008 passed by the learned Addl. Civil Judge (Sr. Division), Nakodar, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-respondents have filed the suit for possession on the basis of title of the plaintiffs and defendants no.2 and 3 with respect to the land measuring 1 kanal 1 marla detailed and described in the head note of the plaint situated in the revenue estate of village Badli, Tehsil Shahkot, District Jalandhar.

4. The suit has been contested by the present appellant-defendant on the grounds *inter alia* that he has constructed the house over the land in dispute about 25 years back. He also installed the hand-pump and got electric connection therein. He also planted trees. All these facts were duly mentioned in the civil suit no. 420 of 1994, titled as Jagir Singh V. Dalip Singh etc., which was decreed in favour of the appellant. It was further pleaded that the property in dispute is owned and possessed by defendant no.1 as owner for the last 35 years. His possession is peaceful, continuous, hostile, without any interruption and as such he has

become owner of the suit property by way of adverse possession. Thus, he pleaded for dismissal of the suit.

5. Plaintiffs-respondents filed the replication to the aforesaid written statement controverting all the pleas raised therein and reaffirmed that of the plaint. From the pleadings of the parties, the following issues were framed by the learned trial Court :-

1. Whether the plaintiff is entitled to the decree for permanent injunction as prayed for?OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form?OPD
3. Whether the plaintiffs are not coming in the Court with clean hands?OPD
4. Whether the suit of the plaintiff is time barred and is not within limitation?OPD
5. Relief.

6. On appreciation of the evidence recorded and the contentions raised by the learned counsel for the parties, the suit of the plaintiffs-respondents was decreed by the learned trial Court vide impugned judgment and decree dated 06.12.2008.

7. Aggrieved with the aforesaid judgment and decree dated 06.12.2008, appellant-defendant preferred the appeal. The same was dismissed by the learned Additional District Judge, Jalandhar vide impugned judgment and decree dated 12.01.2011. Hence this Regular Second Appeal.

8. I have heard Mr. Rakesh Kumar, Advocate, learned counsel for the appellants and have carefully gone through the record of the case.

9. Initiating the arguments, learned counsel for the appellant contended that the appellant-defendant is in possession of the suit property for the last more than 35 years and prior to him his father was in

possession of the suit property. He has raised the construction of the house and has also planted the trees. Even, the electric connection was installed in the demised premises in his name. He further contended that the possession of appellant over the suit property has been certified by the findings recorded by the Court in Civil Suit no. 420 of 1994 titled as 'Jagir Singh Vs. Dalip Singh'. He contended that the possession of appellant-defendant over the suit land was continuous, uninterrupted and hostile for a period of more than 35 years. So, appellant has become the owner of the suit property by way of adverse possession. Thus, he contended that plaintiffs-respondents are not entitled for the possession of the suit property.

10. I have duly considered the aforesaid contentions.

11. It is pertinent to mention that the plaintiffs and defendants no.2 and 3 have purchased the property from the father of appellant-defendant namely Massa Singh and on the basis of said purchase, the plaintiffs and defendants no.2 and 3 were recorded as owner in the revenue record, which is evident from the copies of jamabandies for the year 1990-91 Ex.P-16, 1995-96 Ex.P-18, 2000-01 Ex.P-21. The aforesaid revenue record depicts the plaintiffs to be the owner of the suit property.

12. It is not disputed that appellant-defendant Jagir Singh has filed the civil suit no. 420 of 1994 for permanent injunction against the plaintiffs and defendants no.2 and 3. The said civil suit vide judgment dated 04.01.2001 (Copy Ex.P-3) was decreed in favour of the appellant. Plaintiffs preferred the appeal against that judgment, which was decided by the learned Additional District Judge, Jalandhar on 15.09.2001.

Though, the appeal filed by the plaintiffs was dismissed, but the judgment and decree passed by the learned trial Court was modified and the plaintiffs were given liberty to get the possession of the suit property by adopting the due course of law. So, even in the previous round of litigation between the parties though, the injunction was granted in favour of the appellant, but the plaintiffs and defendants no.2 and 3 were held entitled to seek possession of the suit property on the basis of their title by adopting the due course of law. So, there can be no dispute with the title of the plaintiffs, defendants no.2 and 3 qua the suit property.

13. Appellant has also raised the plea that he has become the owner of the suit property by way of adverse possession, which also shows that impliedly he has admitted plaintiffs and defendants no.2 and 3 to be the owner of the suit property because the plea of adverse possession presupposes the title of the opposite party.

14. The plea raised by the appellant that he has become the owner of the suit property by way of adverse possession is also not substantiated. This fact is not disputed that the property in dispute was sold to the plaintiffs, defendants no.2 and 3 by Massa Singh, the father of appellant-defendant. Appellant-defendant had earlier filed the suit for preemption and that suit filed by the appellant-defendant was dismissed. Anyhow, he continued in possession of the suit property. In order to establish the plea of adverse possession, appellant-defendant was required to establish the following ingredients:-

- (a) on what date he came into possession;
- (b) what was the nature of his possession;

- (c) whether the factum of possession known to the other party;
- (d) how long his possession has continued and
- (e) his possession was open and undisturbed.

15. It is further the settled principle of law that in order to establish the adverse possession, the possession must start with wrongful disposition of the rightful owner. But, in the instant case, all these ingredients are clearly missing. Appellant-defendant has nowhere pleaded that he came in possession of the suit property by way of wrongful disposition of the true owner i.e. the plaintiffs, defendant no.2 and 3. He has also not specified that on which date he came into possession and what was the nature of his possession. He has also not pleaded that from which date his possession has become adverse and hostile to the plaintiff, defendants no.2 and 3, the true owners. It is the settled principle of law that mere long possession cannot establish the adverse possession. Thus, appellant-defendant-Jagir Singh has not been able to establish his plea that he acquired the ownership of the suit property by way of adverse possession.

16. Consequently, as the plaintiffs, defendants no.2 and 3 are the owners of the suit property, so they have every right to seek the possession of the suit property from the appellant-defendant who is in unauthorized possession thereof.

17. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned Courts below.

18. Consequently, no question of law, much less, the substantial

question of law arises in the present appeal.

19. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

October 17, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No