

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1) **Date of Decision: 17.08.2016**
RSA No.1505 of 2016 (O&M)

Chuhar Ram and others ...Appellants

Vs.

Hirda through LR and others ...Respondents

2) **RSA No.1508 of 2016 (O&M)**

Chuhar Ram and others ...Appellants

Vs.

Rameshwar and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?
3. Whether the order is speaking/reasoned?

Present:- Mr. Hardip Singh, Advocate
for the appellants.

Amol Rattan Singh, J.

These are two appeals filed by the defendants in a suit filed by the respondent-plaintiff seeking a declaration that he had become the exclusive owner of land bearing Khasra Nos.281 and 284 min., situated in village Ram Nagar, Tehsil Rajpura, District Patiala. He also sought a decree of permanent injunction restraining the 109 defendants arrayed as such, from interfering in his cultivating possession of the suit land, in any manner.

These two separate appeals have been filed against the judgment

of the learned first appellate Court, in view of the fact that the respondent-plaintiff and the present appellant, had filed both cross appeals before that Court, against the judgment of the learned Civil Judge (Junior Division), Rajpura, partly decreeing the suit of the respondent-plaintiff.

A decree of declaration on the basis of adverse possession was denied to the plaintiff, whereas a decree was issued permanently injunctioning the defendants from interfering in the peaceful possession of the plaintiff over the suit land. Hence, these two separate appeals.

The original plaintiff, Hirda son of Jeona, died during the pendency of the suit itself and was substituted by his son and legal representative, Baldev Singh, through out thereafter.

2. The facts, as taken from the judgments of the Courts below, are that the plaintiffs' father, i.e. Jeona, had occupied the suit land in the year 1957 when it was lying vacant and unoccupied. He continued in such possession treating himself as the exclusive owner thereof, right till his death on 02.05.1986. Thereafter, the plaintiff, Hirda, stated that he came into cultivating possession of the land and remained so, to the knowledge of the defendants and all others. The contention was that the possession was continuous, visible, undisturbed, hostile to the owner and consequently adverse but yet open and peaceful, to the knowledge of all.

Consequently, the suit was filed seeking a declaration of ownership on the basis of adverse possession of the land, open and hostile to the knowledge of the defendants and all others, stating therein that though some "concerned persons had died but their names still continue to figure in the revenue record" even though they have no right, title or interest in the suit land.

It was further alleged in the plaint that about one week prior to the filing of the suit (on 19.03.2008), the defendants stated illegally proclaiming their right, denying the status of the plaintiff, trying to interfere in his peaceful possession of the suit land and were thereby trying to take forcible possession thereof. Hence, the suit came to be instituted.

3. Upon notice issued to them, defendants No.1 to 7, 11, 12, 14 to 19, 43 and 44 appeared and filed their joint written statement, stating therein that the total land included Khasra Nos. 281 and 284, measuring 80 bighas and 7 biswas but the plaintiff had not given the description of the entire land but yet had impleaded all the owners of the said land. As such, he had no cause of action against the answering defendants because the plaintiff was neither the owner nor in possession of Khasra Nos.281 and 284 and revenue entries if any existed in the name of plaintiff, regarding his cultivating possession of the land, were illegal entries, null and void, having no effect on the rights of the answering defendants.

It was further contended in the written statement that the total land of 80 bighas and 7 biswas came to the ownership of Chuhar Ram (defendant No.1), Munshi Ram, Tulsi, Mansa, Parsa all sons of Mohra @ Mohar Chand, Assa son of Joki, Dalip son of Karmu, Sunder son of Saudagar, Bachan son of Bhago (defendant No.91) and Des Raj son of Shadi (father of defendants no.43 and 44), vide mutation no.340 dated 19.01.1958, entered pursuant to a civil Court decree, after which the land was transferred in the names of the aforementioned persons in equal shares.

It was further stated that Khasra Nos.281 and 284 came to the share of Des Raj son of Shadi, who was also a co-sharer in the remaining land measuring 80 bighas and 7 biswas and on the spot, Rajinder and Jasmer,

both sons of Des Raj, were in possession of the said Khasra numbers and therefore, the plaintiff had no concern with them. The entries, in fact, it was contended, needed to be corrected in favour of the aforesaid defendants No.43 and 44.

It was further yet contended that the plaint was time barred.

4. On merits, it was stated that as per the jamabandi for the year 1958-59, Khasra No.281, land measuring 4 bighas was in the cultivating possession of one Sunder who was a co-sharer in the total land, and khasra No.284, also measuring 4 bighas, was under the cultivating possession of Des Raj, father of defendants No.43 and 44, who was again a co-sharer in the total land.

Thereafter, Jeona son of Badama (father of the plaintiff), in connivance with revenue officials made wrong entries in the aforesaid two Khasra numbers in his favour, though actual possession was with defendants No.43 and 44.

It was denied that the land was vacant and unoccupied in 1957 thereby enabling Jeona to occupy it, or that he continued to occupy it thereafter, making his possession hostile or adverse to the true owners.

Similarly, it was further pleaded, that the entry of the plaintiff in the revenue record, after the death of Jeona, also did not effect the rights of the answering defendants as even the plaintiff never came into possession of the suit land.

On the aforesaid pleadings, as also raising the usual issue of suppression of material facts etc., dismissal of the plaint was prayed for.

5. No replication having been filed, the following issues were framed by the learned Civil Judge (Junior Division), Rajpura:-

- “1. Whether plaintiff has become exclusive owner of the suit land by way of long, continuous, un-obstructed, undisturbed, by way of adverse possession? OPP
2. Whether the plaintiff is entitled to declaration as prayed for? OPP
3. Whether plaintiff is entitled to permanent injunction as prayed for? OPP
4. Whether the plaintiff has no come to the court with clean hands? OPD
5. Whether the plaintiff has no affixed the advalorem court fee? OPD
6. Relief.”

6. The plaintiff examined four witnesses including himself in support of his plaint by way of oral evidence, and tendered documentary evidence in the form of jamabandies (Record of Rights), Exs.PA to PI and Khasra Girdawaries as Exs.PJ to PN.

The defendants examined Maan Singh son of the first defendant, as also Rajinder Singh, Defendant No.43 as defence witnesses and further tendered into evidence eight documents.

7. Upon appraisal of the aforesaid evidence and the pleadings of the parties, the learned Civil Judge, relying upon a judgment of the hon'ble Supreme Court in **Gurudwara Sahib v. Gram Panchayat village Sirthala & Anr.** (2014) 1 SCC 669 held that a declaration of ownership on the basis of adverse possession cannot be sought by the plaintiff but can be claimed if the person alleging himself to be in adverse possession is a defendant.

It was further held however, that if the defendants filed a suit for possession or ejectment of the plaintiff, it would be open to the plaintiff to take a plea of adverse possession in his defence.

8. On the second prayer made in the suit by the plaintiff, i.e. of

permanently injuncting the defendants from transferring and alienating the suit property and from interfering in the peaceful possession of the plaintiff over the suit land, it was held that as regards the alienation of the suit property, the defendants could not be restrained from alienating their ownership in any manner.

However, as regards interference in the plaintiffs' peaceful possession, upon an examination of the jamabandi from the years 1962-63 onwards, till the year 2002-03, as also the Khasra Girdawaries for the years 2003 to 2007, that Court recorded a finding that first the father of the plaintiff and then plaintiff himself, were in possession of the suit property.

The contention of defendants No.43 and 44 to the effect that in the year 1958-59 Sunder was in possession, was found to be factually correct, who had been given possession on behalf of one Kundan son of Harnama. However, thereafter the defendants had failed to show why the entries in the jamabandies right since the year 1958-59, showing the possession of the father of the plaintiff and thereafter plaintiff, were never challenged and as such, with even DW2 Rajinder Singh admitting in cross-examination that he had never applied for correction of the Khasra Girdawaries and that Sunder had died about 30 years ago, it was found that actually the possession of the suit property was with the plaintiff and before him, his father. Thereafter, having found as above, it was held that even though the plaintiff could not be declared to be the owner of the suit land in a suit filed by him, his possession thereof deserved to be protected and consequently, that issue was decided in favour of the plaintiff and the suit partly decreed, restraining the defendants from interfering with the possession of the plaintiff or from dispossessing him therefrom, except in due course of law.

9. The plaintiff as also 24 of the 109 defendants, including defendants No.1, 43 and 44, filed cross appeals against the aforesaid judgment of the learned Civil Judge, before the learned Additional District Judge, Patiala.

The learned first appellate Court, after noticing the facts and the pleadings before the learned lower Court, found that the factual position with regard to the possession of the plaintiff and his father to the suit property duly stood proved and further, that the learned Civil Judge had also not erred in declining to issue a decree of declaration of ownership in favour of the plaintiff, on the basis of his adverse possession, in a suit instituted by him.

Consequently, the appeals filed by both, the plaintiff as also the defendants, challenging the decree of the learned Civil Judge, were dismissed by the first appellate Court.

10. Before this Court, learned counsel for the plaintiff submits that though the relief of declaration of ownership in favour of the plaintiff was rightly refused by the Courts below, however, once that decree was refused, thereby implying that the contesting defendants at least were owners of the suit property, the decree of permanent injunction could not have been granted in favour of the plaintiff by those Courts.

He submitted that a true owner cannot be enjoined from entry on his own land and consequently, even the decree of permanent injunction granted to the respondent-plaintiff, deserves to be reversed and the suit of the plaintiff dismissed in toto throughout.

11. Having considered the aforesaid argument and having perused the judgments of the learned Courts below, it is seen that a defence witness, i.e. a witness for the appellants-defendants, admitted that as regards

cultivating possession shown in the revenue record in favour of the respondents' father, no application for correction of the khasra girdawaris had ever been moved by the appellants-defendants.

Further, no suit for possession was admittedly filed by them and not even a counter claim in the present lis was filed.

Learned counsel however submits that the possession of the plaintiff and his father not having been shown to be permissive, a decree of permanent injunction cannot be granted in his favour.

In this regard, a judgment of a coordinate Bench of this Court in the case of Mohinder Singh Vs. Pala Singh and others, 2010(1) RCR (Civil) 750, as also of a Single Bench of the Delhi High Court in the case of Kuldeep Singh Hooda Vs. Narender Mehlawat and others, 2011 (5) RCR (Civil) 854 and another judgment of a coordinate Bench of this Court in the case of Karan Singh and others Vs. Rajpal and others, 2013 (5) RCR (Civil) 3, have been cited by him.

12. I have considered the above.

It has been held by the Supreme Court in the case of Ram Rattan and others Vs. State of U.P., AIR 1977 SC 619, as also in the case of Krishna Ram Mahale (dead) by his legal representatives Vs. Mrs. Sbhobha Ram Venkat Rao, AIR 1989 SC 2097, that a right of a trespasser also needs to be protected, even against a true owner, if his possession is established.

In the present case, the respondent-plaintiff having successfully established his possession over the suit property since the time at least of his father, I see no error in the judgments of the Courts below in decreeing the suit for permanent injunction in favour of the respondent-plaintiff against the

appellants, even while declining to grant a decree of declaration of ownership in favour of the plaintiff.

It is further seen that the Courts below committed no error in relying upon the judgment of the hon'ble Supreme Court in *Gram Panchayat village Sirthalas'* case (supra), wherein it was held as follows:-

“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.”

Thus, the law well settled on that issue, that a plaintiff cannot seek a declaration of ownership on the basis of prescription or adverse possession of more than 12 years, was reiterated by their Lordships in the aforesaid judgment.

Though some judgments from various High Courts did hold a contrary view at some stage, the law presently settled as has been reiterated in the aforesaid recent judgment by the Apex Court, is to the effect that an occupier in adverse possession can only take such plea as a defendant.

13. In *Sirthalas'* case itself, however, the relief of injunction granted by the Courts below was approved by the Supreme Court, though on a different ground, to the effect that the decree of the learned civil Court, granting such permanent injunction not having been challenged in appeal by the defendants, this Court could not have reversed that finding in a second appeal.

Even having given the aforesaid reasoning, thereafter, in the

ultimate para of the aforesaid judgment (in *Sirthala*), it was held as follows:-

“10. As the appellant is in possession of the suit property since 13-4-1952 and has been granted the decree of injunction, it obviously means that the possession of the appellant cannot be disturbed except by due process of law. We make it clear that though the suit of the appellant seeking relief of declaration has been dismissed, in case the respondents file suit for possession and/or ejectment of the appellant, it would be open to the appellant to plead in defence that the appellant had become the owner of property by adverse possession. Needless to mention at this stage, the appellant shall also be at liberty to plead that findings of Issue 1 to the effect that the appellant is in possession of adverse possession since 13-4-1952 operates as res judicata. Subject to this clarification, the appeal is dismissed.”

14. As regards the plea of adverse possession, it must also be noticed here that in Krishnamurthy S. Setlur (Dead) by LRs v. O.V. Narasimha Setty and Others (2007) 3 SCC 569, it was held that:-

“In the matter of adverse possession, the Courts have to find out the plea taken by the plaintiff in the plaint. In the plaint, the plaintiff who claims to be owner by adverse possession has to plead actual possession. He has to plead the period and date from which he claims to be in possession. The plaintiff has to plead and prove that his possession was continuous, exclusive and undisturbed to the knowledge of the real owner of the land. He has to show a hostile title. He has to communicate his hostility to the real owner. None of these aspects have been considered by the High Court in its impugned judgment.”

A perusal of the above, obviously would seem to show that it is not just a defendant but also a plaintiff who can take the plea of adverse

possession but obviously he has to prove it on the parameters established by law to prove such possession, adverse to the true owner of the suit property.

In State of Rajasthan v. Harphool Singh (2000) 5 SCC 652, also, the appeal before their Lordships had its origins in a suit filed by the plaintiff against the State, claiming adverse possession of public property, which was decreed in his favour by the trial Court, the first appellate Court as also the High Court, by virtue of the first and second appeals filed by the State before two appellate Courts, having been dismissed.

Though the Supreme Court reversed the judgments of all the Courts below, thereby allowing the appeal and dismissing the suit filed by the plaintiff, it was not held in that judgment also, that the plea of adverse possession was not available to the plaintiff. It was, in effect, held that he could not prove all the ingredients necessary to claim title on the basis of adverse possession against the State, and the findings of the Courts below holding him to have proved his adverse possession, were lackadaisical.

15. In State of Haryana v. Mukesh Kumar (2011) 10 SCC 404, the State of Haryana was the plaintiff before the civil Court, seeking a declaration of title in its favour on the ground that it had acquired such title by way of possession of the suit property for 55 years, adverse to the true owner of the property. In that appeal, the Supreme Court discussed the entire law on the concept of adverse possession, starting from 1275 in England, finally holding that today the law on adverse possession required a fresh look upon it. Consequently, the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India, was asked to take appropriate steps for initiating the process of deliberating upon the question of either abolition of the law on the subject, or to make suitable amendments

in that law.

In that case also, though the stand of the State, (specifically the police department), in trying to grab the property of a citizen on the plea of adverse possession was very adversely commented upon by the Apex Court and the appeal of the State dismissed with costs of Rs.50,000/-, it was not specifically held that such a suit filed by the plaintiff was not maintainable.

Similar was the position in a previous judgment referred to by their Lordships, in the case of Hemaji Waghaji Jat v. Bhikhabhai Khenjarbhai Harijan (2009) 16 SCC 517, wherein again the entire law was discussed but with no specific observation that a suit filed by the plaintiff, seeking a declaration of title on the basis of adverse possession, was not maintainable.

16. However, in *Sirthalas'* case (supra) it has been authoritatively held by their Lordships that the plea of declaration of ownership on the basis of adverse possession of a suit property, is not available to a plaintiff but only to a defendant.

The reasoning behind that is not far to seek, inasmuch as, Article 65 of the Schedule to the Limitation Act, 1963, stipulates a period of limitation to file a suit for possession of immovable property or any interest therein based on title, to be 12 years. However, the period of 12 years is to start running from the date when the possession of the suit property by the defendant in the suit becomes adverse to the plaintiff.

Thus, a suit filed by a plaintiff seeking possession of immovable property on the basis of his title thereto, would never be barred by limitation till the defendant takes a plea in response to the plaint that he has, in fact, been in possession of the suit property for more than 12 years prior to the

filing of the suit and such possession has been open and hostile to the knowledge of the plaintiff (if the plaintiff is the true owner of the property) and despite such knowledge of open and hostile possession of the defendant, the plaintiff did nothing for 12 years to oust the defendant from such possession.

Hence, in the opinion of this Court, no matter what the genesis of the law on adverse possession may have been, as it passed on to India as a concept in British law, today as per law standing in India, the plea of adverse possession can only become available to a defendant to oust the true owner of the property, in a suit filed by such owner against the possessor of the property, if the possessor can prove that he has been in such adverse possession for more than 12 years and consequently, the suit of the plaintiff-true owner of the property, is barred by limitation.

Obviously, in such a situation, a plaintiff can never take the plea of adverse possession in a suit filed by him.

In *Sirthalas'* case (supra) their Lordships having now specifically held so, as regards the non-availability of the plea of adverse possession to a plaintiff, this Court in any case is otherwise also bound by the ratio of that judgment.

17. Hence, there remains no manner of doubt left, in the opinion of this Court, that the judgments of the learned Courts below, partly decreeing the suit of the respondent-plaintiff, to the extent of a decree of permanent injunction in his favour and against the appellant-defendants, was a wholly correct view and as such, those judgments and decrees require no interference with.

Obviously, the appellants would be well within their rights, if

they establish their ownership, to take legal process to oust the respondent-plaintiff on the basis of title, if such a suit or other proceedings to oust him are otherwise maintainable. Any such proceedings, if instituted, would be decided on their own merits, with all parties at liberty to take all pleas as are legally available to them.

In view of the above, finding no error in the judgments of the Courts below and no merit in the present appeals, they are dismissed *in limine*, with no order as to costs.

August 17, 2016*vcgarg/dinesh***(AMOL RATTAN SINGH)
JUDGE**