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

**RSA No. 4789 of 2013 (O&M)
Date of decision: 05.12.2016**

Mewa Singh

...Appellant

vs.

Amar Gir

....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. A.S. Gulati, Advocate,
for the appellant.

AMOL RATTAN SINGH, J.

This is the second appeal of the defendant in a suit filed by the respondent herein (hereinafter referred to as the plaintiff), seeking possession of land measuring 4 kanals 16 marlas situated in village Chalela, Tehsil and District Patiala, fully described in the impugned judgment of the learned Civil Judge (Junior Division), Patiala.

The facts, as taken from the judgments of the learned courts below, are that it was contended by the plaintiff that the appellant had entered into an agreement with him on 12.08.1994 to purchase the suit property from him (i.e. the appellant-defendant had entered into an agreement to purchase the property from the respondent-plaintiff herein).

It was contended that the sale deed was to be executed within one month after the sanction of the mutation in favour of the plaintiff, with the sale consideration having been settled at Rs. 1,53,000/-, of which a sum of Rs. 41,000/- was paid to the plaintiff as earnest money. A mutation entry of the suit land was stated to have been sanctioned in favour of the plaintiff in the

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year 1995, with the plaintiff having thereafter requested the appellant to pay the remaining consideration amount and to get the sale deed executed.

It was further contended in the plaint that it had also been agreed upon to put the appellant-defendant in possession of the suit property after the registration of the sale deed and therefore, the plaintiff remained in possession through out. He had sown '*Bajra*' crop in the year 1996 but the appellant illegally ploughed the same by force and a report in that regard was lodged with the police on 17.08.1996. Thereafter, it was alleged that the appellant herein again illegally ploughed the crop by force and the matter was again reported to the police, with the plaintiff also having made applications in that regard to the Senior Superintendent of Police and higher authorities.

The plaintiff claimed to have continued thereafter sowed his crop again in the suit land, remaining in possession thereof till the '*Rabi*' season, 2005.

2. In the year 2003, the appellant herein is stated to have moved an application for correction of the *khasra girdawari* before the Assistant Collector, 2nd Grade, Patiala, with the said application having been allowed and the *khasra girdawari* correct in the name of the appellant-defendant, vide an order dated 30.12.2004.

The plaintiff filed a revision against the said order which was dismissed on 10.08.2009 and thereafter, it was contended that the appellant under the "garb of the said order" illegally entered into possession of the suit land.

3. The appellant also filed a suit for specific performance of the agreement, claiming that khasra no. 90//16, measuring 4 kanals and 10 marlas had been agreed to be sold to him by the plaintiff. The said suit was dismissed

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vide a judgment and decree dated 02.08.2005, and the appeal filed was also dismissed vide a judgment and decree dated 17.05.2006, with the second appeal filed before this Court also meeting the same fate.

4. Thereafter, the suit in the present *lis* was instituted on 21.11.2007, seeking possession of the suit property which had allegedly been entered upon illegally by the present appellant-defendant, after the order of the Assistant Collector 2nd Grade, Patiala.

5. Upon notice issued, the present appellant-defendant filed a written statement taking preliminary objections to the effect that his possession over the suit land had become adverse to the knowledge of the plaintiff and therefore, he had become owner in possession of the property, which had remained in his possession for 20 years.

It was further denied that the appellant-defendant had entered into an agreement of sale dated 12.08.1994 for land measuring 04 kanals and 16 marlas. The settled sale consideration of Rs. 1,53,000/- and the payment of earnest money of Rs. 41,000/- were also denied, as were the all other contentions of the plaintiff.

6. From the aforesaid pleadings, the following issues were framed by the learned Civil Judge:-

“1. Whether the plaintiff is entitled to the possession of the suit land? OPP

2. Whether the plaintiff has not come to the court with clean hands? OPD

3. Whether the plaintiff has not paid the correct court fee on the plaint? OPD

4. Whether the possession of the defendant is

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adverse and he has become of the owner in possession of the suit land? OPD

5. *Whether the plaintiff has no locus-standi in file the present suit? OPD*

6. *Relief.”*

7. In support of his case, the plaintiff examined himself and closed evidence whereas the present appellant-defendant did not examine anybody at all in support of his pleadings. Consequently, his evidence was also eventually closed by an order of the court.

8. Having considered the pleadings as also the evidence led by the plaintiff, the learned Civil Judge held that though the stand of the appellant-defendant was that he had become owner of the suit property by way of adverse possession, he had not even stepped into the witness box to support his case. Hence, an adverse inference was drawn by the court, citing Section 114 of the Indian Evidence Act, 1872, to hold that no adverse possession had been proved.

Further, it was held that if the possession of the defendant had become adverse and hostile to the knowledge of the plaintiff, there would have been no reason for him to file a civil suit seeking specific performance of the agreement entered into with the plaintiff.

On the other hand, with the plaintiff having stepped into the witness box himself and having proved the lodging of the DDR, Ex. P-1, with regard to ploughing of the '*Bajra*' crop, as also proving the '*Khasra Girdawari*', Ex. P-2, whereby the possession of the suit property with the owners thereof, which thereafter, had been transferred to the defendant, vide report no. 287 dated 14.02.2005, it was held that such possession of the

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plaintiff stood proved.

It was further found by the learned Civil Judge that no explanation had been given by the present appellant (defendant), as to why, if he had remained in possession of the suit property for 20 years, he had not moved any application for correction of the revenue entries immediately prior to 2005.

9. On the aforesaid reasoning, it was held that the plaintiff was dispossessed by the appellant in the year 2005 and the appellant had never remained in possession of the suit property for 20 years as claimed by him, to hold that he had become owner thereof by way adverse possession.

Consequently, the suit of the plaintiff was decreed in his favour directing the present appellant to deliver possession of the suit land to the plaintiff within a period of 2 months, failing which he would be at liberty to take possession in the due course of law.

10. The present appellant having filed an appeal before the learned first appellate court, that Court first noticed the pleadings and issues framed by the learned lower court. Thereafter, it is recorded in the impugned judgment that the present appellant had filed an application under Order 41 Rule 27 CPC for leading additional evidence, on the ground that the lower court had not given enough opportunities to lead evidence and that he wish to produce copies of '*Jamabandies*' from the year 1996-97 onwards, as also sale deeds that were executed by the plaintiff in his favour, as also in favour of three other persons, i.e. Jasbir Singh, Gain Singh and Basheshar Singh.

A reply was filed to the said application by the plaintiff, and the application was thereafter considered by the learned lower appellate Court along with the arguments addressed in the appeal itself. On the argument that

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the appellant was not allowed to lead evidence, it was found by the first appellate Court that after the plaintiffs' evidence was closed on 11.10.2010, the case was adjourned to 10.11.2010, on which date it was adjourned for the evidence of the defendant to 19.11.2010. On that date it was again adjourned for cross-examination of defence witnesses to 02.12.2010 as no witness was present, after which, on 02.12.2010, it was again adjourned to 17.12.2010, with a last opportunity given to the present appellant to lead evidence by taking *dasti* summons. Yet, on 17.12.2010 it was adjourned to 03.01.2011, as again no witness had come present for the defendant. Finally, with no witness present on that date too, the trial court closed evidence.

Hence, it was found that with three effective opportunities for leading evidence having been given by the learned Civil Judge, and the appellant still not having led such evidence, the order for closure thereof was not erroneous in any manner.

11. Other than the above, on 'merits of the application', the first appellate court also recorded a finding to the same effect as was recorded by the Civil Judge, i.e. with the plaintiff having tendered in evidence the '*Jamabandi*' for the year 2001-02, showing the property to be in his ownership and with the appellant not having been able to prove his possession thereof for 20 years as contended, that plea was not available to him.

A further finding was recorded that the '*Jamabandi*' for the year 1996-97 and the sale deeds executed by the plaintiff, as were sought to be led in evidence, were not shown to be of any relevance to the controversy, as by the said sale deed, the property was not shown to have been sold to the present appellant.

12. It was further found by the learned lower appellate court, that the

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appellant had not shown in his written statement as to on which date he took possession of the suit property. Yet further, though the appellant denied that he had even filed a suit for specific performance of the agreement dated 12.08.1994, the judgment passed in that suit had been placed on record by the plaintiff. No other agreement, other than the one that was subject matter of that suit, i.e. the agreement dated 12.08.1994, was ever produced by the appellant, to show that the plaintiff had agreed to sell the land to him (vide any other agreement).

Other evidence led by the plaintiff, such as the DDR, Ex. P-1, '*Khasra Girdawari*', Ex. P-2, were also referred to by the first appellate court, as they had been by the learned lower court.

13. On the basis of the aforesaid findings, the first appeal, as also the application under Order 41 Rule 27 CPC, were dismissed by the learned Additional District Judge, vide his impugned judgment.

14. In this 2nd appeal, though Mr. Gulati, learned counsel for the appellant, has tried to express to this Court that the appellant was actually in possession of the suit property for 20 years, as contended before the courts below, however, a specific finding having been recorded on the basis of revenue record, that it was actually the plaintiff who was the owner of the suit property, and who was shown to be in possession thereof till the year 2001-02 as per '*Jamabandi*' for that year (Ex. P4), and that the appellant-defendant was shown to be in possession only from the year 2005 year onwards, I see no reason to upset that finding. Hence, with the suit having been filed on 21.11.2007 by the respondent-plaintiff, the appellant-defendant obviously cannot claim to have perfected his title by way of adverse possession, after a period of only two years of such possession.

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15. Further, the very fact that he did not lead evidence for four dates before the learned Special Judge (though stated to be three effective dates by the learned appellate court), would go to prove that other than the plea of adverse possession, the appellant actually had no other argument. That plea in any case not being available to him with, firstly, the revenue record showing the respondent-plaintiff to be in possession till only two years before the filing of the suit, and the appellant never having led any other evidence, I see no error in the judgments of the learned courts below.

Consequently, finding no merit in this appeal, it is dismissed in *limine* but with no order as to costs.

CM No. 12905-C-2013

In view of the fact that the appeal itself has been dismissed on merits in *limine*, the issue of condoning the delay of 232 days in filing the appeal has been rendered academic and is not gone into.

December 05, 2016
Davinder kumar/nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No