

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2777 of 2016 (O&M)
Date of Decision: 02.06.2016

Murari through LRs

.... Appellant

Vs.

Sanwar Mal

.... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Vivek Khatri, Advocate
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Amol Rattan Singh, J (Oral)

This is the second appeal by the defendant (represented by his legal representatives), after the suit filed by the respondent-plaintiff, seeking possession of the suit property, was decreed in his favour by the learned Additional Civil Judge (Senior Division), Loharu and the first appeal filed by the present appellant-defendant (hereinafter to be referred to as the defendant), was also dismissed by the learned Additional District Judge, Bhiwani.

2. The facts, as taken from the judgments of the Court below, are that the plaintiff claimed in his suit that he was a permanent resident of village Behal and owner in possession of land measuring 29 kanals 6 marlas, falling in the same revenue estate, fully described in the plaint. He

submitted that in the year 1995 he had gone out of his village for the some time and had handed over the possession of the suit land to the defendant, for care of the land and as such, the defendant was in permissive possession thereof. However, he (defendant) had no right or title in the suit property, but being a strong headed person, he thereafter refused to hand over the vacant possession to the plaintiff, when he came to take such possession back.

Consequently, the suit was instituted by the plaintiff on 03.08.2011.

3. Upon notice issued to him, the defendant appeared and filed a written statement, taking preliminary objections with regard to locus, cause of action, jurisdiction, non-joinder of necessary parties etc.

On merits, it was submitted that the plaintiff was not the sole owner of the land in dispute, of which the defendant and his LRs had become owner by way of adverse possession, because as a matter of fact, the plaintiff had never given possession of the suit property to the defendant but the property had been "adversely possessed" by the defendant from June 1995.

Since then, it was further contended, that they (LRs of the defendant), remained in hostile and open possession of the land, to the knowledge of the owner, and the plaintiff had, as such, filed the suit after concocting a false story.

4. On the basis of the aforesaid pleadings, the learned Civil Judge framed the following issues:-

1. Whether the plaintiff is entitled to take the vacant possession of the suit land from the defendant, as alleged in the plaint? OPP

2. Whether the suit is not maintainable in its present form?
OPD
3. Whether the Civil Court has no jurisdiction to try and decide the present suit? OPD
4. Whether the suit of the plaintiffs is bad for non-joinder and mis-joinder of the necessary party? OPD
5. Relief."

5. The plaintiff examined himself and deposed in terms of his plaint and tendered by way of documentary evidence, a copy of the jamabandi (record of rights) for the year 2005-06, copies of the khasra girdawaries from the year 1992 to 1996 and from 2009 to 2011.

On behalf of the defendant, one Phool Singh, Lamberdar appeared as DW1, the son of the defendant (also one of his legal representatives) testified as DW2 and one Narender son of Ram Singh, appeared as DW3.

By way of documentary evidence, the defendants relied upon a copy of a report bearing No.83, khasra girdawaries from the years 1991-92 to 1995-96 and 2008 to 2011, as also the jamabandi for the year 2005-06, i.e. actually the same jamabandi as was relied upon by the plaintiff.

6. After appraising the evidence, the learned Additional Civil Judge found that DW1, Phool Singh, Lamberdar, admitted tht the possession of the defendant was actually permissible, though in the jamabandi for the year 2005-06, defendant Murari Lal was shown to be in cultivating possession of the suit land, the ownership of which was reflected in the said record to be that of the plaintiff.

Further discussing the testimony of DW1, the learned Civil Judge found, on the basis of evidence led, that the possession of the

defendant was not hostile, in view of the permissible possession handed over to him by the plaintiff and he was therefore entitled to recover the land, being a co-owner in the suit property.

On the above finding, the suit of the plaintiff was decreed in his favour by that Court.

7. In the first appeal filed by the appellant-defendant, the learned Additional District Judge, Bhiwani, also found that the 'jamabandi' for the year 2005-06, showed that the plaintiff was a co-sharer in the suit property, alongwith others, whereas the defendant was shown as a "Gair Marusi".

That Court too, like the lower Court, discussed the testimony of a defence witness, DW1, and stated that he being a Lamberdar of the village, had admitted that the suit property was actually handed over to the defendant by the plaintiff, and as such, the possession not being adverse, the suit for possession filed by the plaintiff, had been rightly decreed in his favour.

The first appeal was also, consequentially, dismissed.

8. In this second appeal before this Court, learned counsel for the appellant submits that defendant Murari Lal was admittedly in possession of the suit property since the year 1995, even as per the case set up by the respondent-plaintiff, and that the suit having been instituted on 03.08.2011, he and his successors-in-interest had, therefore, remained in open and hostile possession for about 16 years at least.

He further submits that, therefore, the reliance by the learned Courts below upon the deposition of DW-1 (Phool Singh), stating that possession was handed over by the respondent-plaintiff to the predecessor-in-interest of the appellant-defendant, i.e. to Murari Lal, could not have

been made the sole basis to hold that the appellant-defendant was not in open and hostile possession over the suit land, especially as DWs 2 and 3, Narinder and Vikas (of whom Vikas is the son of the deceased-defendant Murari Lal), specifically stated that they had simply come into possession of suit property and had not been handed over the suit property.

9. Having considered the aforesaid argument of the learned counsel and having perused the judgment of the Courts below, it is seen that the appellants-defendant nowhere showed as to how they came into possession of the suit property. DW1, i.e. the witness of the appellants-defendant themselves, was shown to be the 'Numberdar' of the village, who specifically stated in terms of the suit of the plaintiff, that the suit property was handed over for cultivation by the plaintiff, Sanwarmal, to the deceased-defendant Murari Lal. The specific case set up by the respondent-plaintiff was that he had left the village in the year 1995 and had, therefore, handed over possession of the land to Murari Lal, for looking after it.

Simply because Murari Lal (defendant) was cultivating the land during the absence of the plaintiff, would not make the possession of the appellants-defendant open and hostile to the plaintiff, once they could not show as to how else they came into possession of the suit land, whereas on the other hand, even the 'Numberdar' who stood as a defence witness, testified in terms of the suit set up by the respondent-plaintiff, that the land was handed over to Murari Lal by the plaintiff.

Obviously, such handing over of the suit land cannot be construed to be an act of hostility, but of a friendly nature, and in the opinion of this Court, the defendant Murari Lal would at best be a licensee, whose licence stood revoked, the moment the plaintiff demanded the suit

property back. This is especially so because even subsequently, at no point, have the appellants-defendant been shown to have proved that at a subsequent point, the land had been demanded back by the plaintiff and at that time it had been refused to be handed over and at least from that point the possession became hostile.

In the opinion of this Court, it cannot be presumed that just because when the plaintiff demanded possession back, it was refused to him, it could be proved to have been hostile through out the 16 years that the suit property remained in possession of the defendant, prior to the filing of the suit. The defendants were not able to show that the plaintiff ever, between 1995 to 2011, had earlier asked for possession back and it was refused. In fact, it has not been pointed out by the learned counsel for the appellant even now, that the said stand was taken by defendant in his written statement. Hence, simply because possession was not handed over at the time when the plaintiff first asked for it, after having earlier handed over the land to the defendants peacefully, it cannot be construed that such possession remained hostile for the entire period of 16 years, or for more than 12 years prior to the filing of the suit.

10. As regards the issue of limitation, as per Article 65 of the Schedule to the Limitation Act, 1963, the limitation within which a suit for possession of immoveable property is to be filed by a plaintiff, based upon his title in such property, is 12 years, with the 12 years starting to run from the date when the possession of the defendant in the suit, becomes adverse to the plaintiff.

Therefore, with the defendant not having proved as to when his possession became hostile, at any time prior to his refusal to hand over

possession to the plaintiff immediately before the filing of the suit by the plaintiff, such limitation would obviously run from such time (presumably 2010-2011), and not from 1995, when friendly and peaceful possession was actually given by the plaintiff to the defendant.

Hence, in the opinion of this Court, the suit was filed within limitation by the plaintiff, in the year 2011, it being well within 12 years of the possession having become hostile, upon refusal of the defendant to hand over such possession, some time before the institution of the suit.

It needs to be stated here that no doubt, the plaintiff did not specify exactly when he demanded possession of the suit property back from the defendant, however for adverse possession to be proved, the onus is on the defendant to prove as to when he first refused to hand back possession. The defendants' case, on the other hand, was that he had, in fact, come into adverse possession right since 1995. That contention has been rejected by the Courts below, as also now by this Court hereinabove, on the ground that even the defendants' own witness testified that possession of the land, in 1995, was handed over peacefully by the plaintiff to the defendant, with the plaintiffs' case being that since he was leaving the village for some length of time, the defendant would look after his land in the meanwhile. To repeat, it was thereafter upon the defendant to prove that he had actually refused to hand over possession at a particular time more than 12 years before the institution of the suit, which he could not prove.

Ownership by way of adverse possession is to be actually frowned upon and if at all a suit is to be decreed against the plaintiff and in favour of a person claiming such hostile possession, the open hostility has to be specifically proved to have been existent for more than 12 years.

11. Hence, with the basic requisites of proving adverse possession not having been proved in any manner whatsoever, I find no error in the judgments of the Courts below in decreeing the suit of the plaintiff, for possession over the suit land, of which he was admittedly a co-owner.

Consequently, the appeal is dismissed *in limine*, however, with no orders as to costs.

Civil Misc. No.7461-C of 2016

Since the appeal itself has been dismissed on merits, the question of condoning the delay of 37 days in filing the appeal is rendered academic and is not gone into by this Court.

June 02 , 2016

vcgarg

**(AMOL RATTAN SINGH)
JUDGE**