

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

R.S.A No.2292 of 2015(O&M)
Date of decision :14.12.2016

Jaswinder Singh

.....Appellant

Versus

Chuhar Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Ashok Bhardwaj, Advocate
for the applicant-appellant.

DARSHAN SINGH, J. (Oral)

CM No. 16714-C of 2016

This application has been filed under Order 41 Rule 19 read with Section 151 of the Code of Civil Procedure, 1908(for short CPC) for restoration of the main appeal bearing no. RSA no. 2292 of 2015.

Heard.

In view of the reasons mentioned in the application, the application stands allowed and the appeal is ordered to be restored at its original number and is taken up today itself.

CM No. 5941-C of 2015

This application has been filed under Section 5 of the Limitation Act for condonation of delay of 798 days in filing the present appeal.

Heard.

In view of the reasons mentioned in the application, the present application stands allowed and the delay of 798 days in filing the present appeal is hereby condoned.

RSA No. 2292 of 2015(O&M)

The present appeal has been directed against the judgment and decree dated 03.12.2012 passed by the learned Additional District Judge, Barnala, whereby the appeal filed by the appellant-plaintiff against the judgment and decree dated 16.04.2012 passed by the learned Civil Judge (Sr. Division), Barnala, has been dismissed.

2. Ranjit Singh (since deceased), the predecessor-in-interest of appellant-Jaswinder Singh filed the present suit for declaration to the effect that he has become the owner of the suit property by way of adverse possession.

3. As per averments in the plaint, the plaintiff and his grandmother were cultivating the land in dispute for the last 50 years. After her death, the plaintiff is in exclusive cultivating possession thereof. He has also constructed a Kotha in the disputed property. The possession of the plaintiff and his grandmother was open, hostile and to the knowledge of the defendant and others. Their possession was never challenged by the defendants. Earlier, Shamsher Singh in connivance with the owners tried to take the forcible possession, due to which the plaintiff filed the suit, which was decreed on 02.06.1989. Neither the defendant nor any other person interfered in the possession of the plaintiff. Thus, they have become the owner of the suit property by efflux of time. Now, the defendants have started threatening to dispossess the plaintiff forcibly and illegally. Hence the suit.

4. The defendants did not appear to contest the suit and were proceeded against *ex parte*.

5. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, the learned trial Court vide impugned judgment and decree dated 16.04.2012 concluded that the plaintiff has failed to fulfil the ingredients of adverse possession and cannot be declared as owner of the suit property on the basis of adverse possession, so the suit was dismissed with costs.

6. Aggrieved with the aforesaid judgment and decree, the appellant-plaintiff preferred the appeal. The same has also been dismissed by the learned Additional District Judge, Barnala, vide impugned judgment and decree dated 03.12.2012. Hence this Regular Second Appeal.

7. I have heard Mr.Ashok Bhardwaj, Advocate, learned counsel for the appellant and have carefully gone through the record of the case.

8. Initiating the arguments, learned counsel for the appellant contended that the predecessors-in-interest of the appellant were in possession of the suit property for the last more than 50 years on the date of filing the suit. Their possession was open, hostile, uninterrupted and to the knowledge of the true owners. The adverse possession of the appellant-plaintiff has matured into the ownership as the period of more than 12 years has expired since long. Thus, he contended that the learned Courts below have wrongly dismissed the suit. The plaintiff should be declared to have become the owner of the suit property on the basis of adverse possession.

9. I have duly considered the aforesaid contentions.

10. The appellant-plaintiff was seeking declaration that he has become the owner of the suit property on the basis of adverse possession.

11. It is well settled principle of law by this time that the suit for declaration claiming ownership on the basis of adverse possession is not maintainable as the plea of adverse possession is available only as a defence. It cannot be use as a sword. This Court in case **Bhim Singh and others Vs. Zile Singh and others 2006(3) R.C.R (Civil) 97** has laid down as under:-

“Under Article 64 of the Limitation Act, as suit for possession of immovable property by a plaintiff, who while in possession of the property had been dispossessed from such possession, when such suit is based on previous possession and not based on title, can be filed within 12 years from the date of dispossession. Under Article 65 of the Limitation Act, a suit for possession of immovable property or any interest therein, based on title, can be field by a person claiming title within 12 years. The limitation under this Article commences from the date when the possession of the defendant becomes adverse to the plaintiff. In these circumstances, it is apparent that to contest a suit for possession, filed by a person on the basis of his title, a plea of adverse possession can be taken by a defendant who is in hostile, continuous and open possession, to the knowledge of the true owner, if such a person has remained in possession for a period of 12 years. It, thus, naturally has to be inferred that plea of adverse possession is a defence available only to a defendant. This conclusion of mine is further strengthened from the language used in Article 65, wherein, in column 3 it has been specifically mentioned "when the possession of the defendant becomes adverse to the plaintiff." Thus, a perusal of the aforesaid Article 65 shows that the plea is available only to a defendant against a plaintiff. In these circumstances, natural inference must follow that when such a plea of adverse possession is only available to a defendant, then no declaration can be sought by a plaintiff with regard to his ownership on the basis of an adverse possession.”

12. Similar ratio of law has been reiterated by Coordinate Benches of this Court in cases **Joginder Kaur Vs. Gurbachan Kaur and others 2013(6) R.C.R (Civil) 685** and **Suresh and others Vs. Parveen Kumar and another 2012(4) R.C.R (Civil) 163**. The Hon'ble Apex Court also in **Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and another**

2013(4) R.C.R.(Civil), 703 has laid down as under:-

“There cannot be any quarrel to this extent 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 filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

Thus, in view of the consistent ratio of law laid down in the cases referred above, the suit filed by the plaintiff for claiming declaration that he has become owner of the suit land on the basis of adverse possession was not maintainable.

13. Moreover, the learned Courts below have rightly recorded the concurrent findings of facts that the appellant-plaintiff had even failed to establish the ingredients of the adverse possession.

14. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

15. Therefore, the present appeal being devoid of merits, is hereby dismissed with costs.

(DARSHAN SINGH)
JUDGE

14.12.2016

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No