

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

R.S.A No.6123 of 2016(O&M)
Date of decision :16.12.2016

Sukhdev Singh and others

.....Appellants

Versus

Jagga Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.R.S.Bains, Advocate
for the appellants.

DARSHAN SINGH, J. (Oral)

CM No. 16106-C of 2016

This application has been filed under Section 5 of the Limitation Act for condonation of delay of 178 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 178 days in filing the present appeal is hereby condoned.

RSA No. 6123 of 2016(O&M)

The present appeal has been directed against the judgment and decree dated 11.01.2016 passed by the learned Additional District Judge, Sangrur, whereby the appeal filed by the appellants-defendants against the judgment and decree dated 13.08.2013 passed by the learned Additional

Civil Judge (Sr. Division), Moonak, has been dismissed.

2. Plaintiff-Jagga Singh filed the suit for declaration to the effect that he is owner in joint possession to the extent of 1/ 4th share of the suit land measuring 219 kanal 12 marlas, 0 kanal 19 marlas and 2 kanal 9 marlas detailed and described in the head note of the plaint situated within the revenue estate of village Alampur. He also sought the relief of joint possession with respect to the land measuring 0 kanal 19 marlas and 2 kanal 9 marlas to the extent of 1/ 4th share. In the consequential relief, he sought a decree for permanent injunction restraining the appellants-defendants from alienating the 1/ 4th share of the plaintiff out of the suit property.

3. As per averments in the plaint, the suit land was earlier owned by Harchand Singh, the father of the plaintiff. After the death of his father, the mutation of inheritance was sanctioned in his favour and he became the joint owner in possession of the suit land as per the share of his father. He got 1/ 4th share of khasra no.124 (0-13), 318 (0-6) and 200 (2-9). The defendants have no concern with 1/ 4th share of the plaintiff over the suit land. He is entitled to the relief of joint possession to the extent of 1/ 4th share of the suit land. Defendants in connivance with each other intend to alienate the suit property and also wants to raise the construction therein for which they have no legal right. Hence, the suit.

4. Appellants-defendants no. 1 to 4 contested the suit on the grounds inter alia that they have no connection with the agriculture land measuring 219 kanal 12 marlas belonging to the plaintiff. It is further pleaded that the father of the plaintiff-Harchand Singh had no concern and was not in possession of the land comprised of khata no. 86/243, khasra no.200 (2-9) to the extent of 1/ 4th share. Rather, the appellants-defendants

are in continuous, peaceful, open, hostile, notorious, uninterrupted and exclusive possession thereof as owner to the knowledge of the plaintiff, his father and the whole world since 06.02.1979. Since then, the appellants-defendants have been using the land in dispute exclusively and continuously. They are tethering their cattle's and have also constructed a boundary wall on three sides. They have also placed their cow dung and have sown the vegetables and trees. In the year 1996, the father of the plaintiff has raised the objection to the possession of the appellants, but with the intervention of the Panchayat and respectable persons of the village, it was orally settled that the balance amount of loan taken by the father of the plaintiff would be paid by the appellants-defendants to the Punjab Agriculture Development Bank, which was actually paid by defendant no.1-Sukhdev Singh. Since then, the adverse possession of the defendants over the suit land was admitted by the father of the plaintiff. Thus, they pleaded that the defendants have become the owner in possession of the suit property by way of adverse possession. The mutation of inheritance with respect to the 1/ 4th share of the land bearing 2 kanal 9 marlas has been wrongly sanctioned in favour of the plaintiff at the back of the defendants. The said mutation has no effect on the rights of the defendants.

5. Defendants no. 5 and 6 have also contested the suit by filing the separate written statement alleging therein that they have purchased the land comprised of killa no. 32//2 min (3-16), 45//2(9-18) from Harchand Singh, the father of the plaintiff vide sale deed dated 972 dated 03.07.1997 for a consideration of ₹ 1,90,000/- and the plaintiff has no concern with the suit land. The plaintiff had earlier filed the suit for declaration to challenge the aforesaid sale deed, but the said suit was dismissed up to this Court and the

present suit is barred by principle of *res judicata*.

6. With these pleas, the defendants pleaded for dismissal of the suit.

7. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 09.04.2010:-

1. Whether the plaintiff is entitled to relief of declaration as prayed for?OPP
2. Whether the plaintiff is entitled to relief of possession as prayed for?OPP
3. Whether the plaintiff is entitled to relief of permanent injunction as prayed for?OPP
4. Whether the plaintiff has no locus standi and cause of action to file the present suit?OPD
5. Whether plaintiff is estopped by his own act and conduct from filing the present suit?OPD
6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD
7. Whether the suit is not maintainable in the present form?OPD
- 7(a) Whether possession of defendants no.1 to 4 on the land comprising in khasra no. 22 to the extent of 1/ 4th share have been continuous, peaceful, open, hostile, undisturbed, exclusive as owners and to the knowledge of plaintiff, his father and whole world and adverse to true owners since 06.02.1979?OPD
- 7(b) Whether plaintiff has not come to the Court with clean hands and has suppressed true and material facts from the Court?OPD
- 7(c) Whether suit is barred by res-judicata U/S 11 of the CPC?OPD
- 7(d) Whether suit is barred U/O 2 Rule 2 CPC?OPD
- 8 Relief

8. On appreciation of the evidence and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit of the plaintiff-respondent with costs vide impugned judgment and decree dated 13.08.2013. He was declared to be co-owner in joint possession to the extent of 1/ 4th share of the land measuring 0 kanal 19 marlas bearing khasra no.124 (0-13), 318 (0-6) and the land measuring 2 kanal 9 marlas bearing khasra no. 200 being the part of the total land measuring 219 kanal 12 marlas detailed and described in the head note of the plaint. He was also held entitled to the joint possession to the extent of 1/ 4th share to the said property. The appellants-defendants were also restrained from alienating or raising any construction over 1/ 4th share of the plaintiff out of the suit

property.

9. Aggrieved with the aforesaid judgment and decree, the appellants-defendants preferred the appeal. The same has also been dismissed by the learned Additional District Judge, Sangrur, vide impugned judgment and decree dated 11.01.2016. Hence this Regular Second Appeal.

10. I have heard Mr. R.S.Bains, Advocate, learned counsel for the appellants and have carefully gone through the paper book.

11. Initiating the arguments, learned counsel for the appellants contended that the appellants-defendants are in continuous, peaceful, open, hostile, notorious, uninterrupted and exclusive possession of 1/ 4th share of the land measuring 2 kanal 9 marlas comprised of khasra no. 200 since 06.02.1979 to the knowledge of the plaintiff, his father and to the whole world. Thus, they have become the owner of the suit property by way of adverse possession. He further contended that the appellants-defendants are using the suit property by tethering their cattle's and placing the cattle dung cakes. They have also constructed the boundary wall and have sown the vegetables and planted the trees. He further contended that even the plaintiff has admitted in the cross-examination that the appellants-defendants have forcibly occupied their land which establishes the plea of adverse possession raised by the appellants. But, the learned Courts below have wrongly ignored the admission of the plaintiff.

12. He further contended that the plaintiff-respondent has also concealed the material facts from the Court. He has already filed the suit to challenge the sale deed dated 03.07.1997 in favour of the respondents-defendants no. 5 and 6. The said suit of the plaintiff was dismissed up to this Court, but this fact has not been disclosed by him in the plaint.

13. Thus, he contended that as the appellants-defendants have become the owner of the suit property comprised of khasra no. 200 (2-9) to the extent of 1/ 4th share, so the plaintiff cannot claim himself to be the owner of this land and cannot seek the relief of joint possession.

14. I have duly considered the aforesaid contentions.

15. The whole claim of the appellants-defendants is based on their plea of adverse possession with respect to the khasra no. 200(2-9) to the extent of 1/ 4th share. They have not raised any dispute with respect to the other land mentioned in the head note of the plaint. Appellants-defendants have alleged that they are in continuous, peaceful, open, hostile, notorious, uninterrupted and exclusive possession of the suit property as owners since 06.02.1979 to the knowledge of the plaintiff, his father and to the whole world. They have further pleaded that they are using the land in dispute to tether their cattles and for placing cattle dung. They have also sown the vegetables, planted the trees and constructed the boundary wall on three sides.

16. The plaintiff has claimed the declaration with respect to the ownership and joint possession of the land in dispute to the extent of 1/ 4th share on the plea that he had received the suit land by way of inheritance on the demise of his father-Harchand Singh. This fact is not disputed that in the revenue record, Harchand Singh, the father of the plaintiff had been recorded as co-owner in joint possession of the land in dispute. Reference can be made to the jamabandi for the year 2003-04 (Ex.P-1). As per the copy of jamabandi Ex.P-1, the total land comprised of this khewat is 219 kanal 12 marlas. Harchand Singh, the deceased father of the plaintiff had 1/ 4th share in in the entire land. Khasra no. 124, 318 and 200 are also the part

of the aforesaid khewat. In the column of cultivation, the co-sharers of the land has been recorded to be in joint possession. The name of the appellants-defendants do not figure in the column of cultivation. After the death of Harchand Singh, the mutation of inheritance was sanctioned in favour of the plaintiff and consequently plaintiff-Jagga singh was recorded as owner in joint possession to the extent of 1/ 4th share of the land measuring 219 kanal 12 marlas, which is evident from the copy of the jamabandi for the year 2008-09 (Ex.P-3). The khasra no. 124 (0-13), 318 (0-6) and 200(2-9) are also the part of the aforesaid land. Thus, it is evident that the appellants-defendants have not been recorded to be in possession of the land in dispute in the revenue record. Their plea regarding possession/adverse possession is only based on the oral evidence. Some stray admission in the cross-examination of the plaintiff with respect to forcible occupation of the land by appellants-defendants will also not establish the alleged long standing and uninterrupted possession of the defendants over the land in dispute.

17. As already mentioned, the appellants-defendants are claiming the title to the suit property by way of adverse possession. The Hon'ble Apex Court in case **Hemaji Waghaji Jat Vs. B.K. Harijan and Ors. 2008(4) CCC 558 S.C**, has observed that the law of adverse possession is irrational, illogical and wholly disproportionate. It is extremely harsh to the true owner and a windfall for a dishonest person who had illegally taken possession of the property of true owner. The law ought not to benefit a person who in clandestine manner takes possession of the property of the owner in contravention of law which in substance would mean that law gives seal of approval to illegal action or activities of a rank-trespasser or

who had wrongfully taken the possession of the property of true owner. In this judgment, the Hon'ble Apex Court has recommended the Government to seriously consider and make suitable changes in the law of adverse possession.

18. The Hon'ble Apex Court in case **Karnataka Board of Wakf Vs. Government of India and others 2004(2) R.C.R (Civil) 702** has laid down as under:-

“11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See :**S M Karim v. Bibi Sakinal AIR 1964 SC 1254, Parsinni v. Sukhi (1993) 4 SCC 375 and D N Venkatarayappa v. State of Karnatakam (1997) 7 SCC 567**). Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (**Dr. Mahesh Chand Sharma v. Raj Kumari Sharma (1996) 8 SCC 128**).”

19. As per aforesaid ratio of law laid down by the Hon'ble Apex Court in order to prove the plea of adverse possession, the following ingredients are required to be established:-

1. On what date he came into possession;
2. What was the nature of his possession;
3. Whether the factum of possession was known to the other party;
4. How long possession is continued
5. And his possession was open and undisturbed.

20. In the instant case, the evidence adduced by the appellants-defendants is entirely lacking to establish the aforesaid ingredients. The *animus possidendi* is an essential ingredient to the plea of adverse possession. The adverse possession must start with the wrongful dispossession of the true owner. One of the basic ingredient to establish the plea of adverse possession is that there must be evidence to show as to when the possession became adverse, so that the starting point of limitation against the party affected can be found. The appellants-defendants have claimed that they are in possession of the suit property since 06.02.1979. the learned trial Court has observed that photographs Ex.D-6 to D-11 makes amply clear that fresh walls have been raised and there was no boundary wall behind the suit property. The revenue record depicts the plaintiff to be in joint possession. The possession of the appellants-defendants is not reflected in the revenue record. The incidences like tethering of cattle's, plating the trees, sowing the vegetables and placing the cattle dung are only incidences of the user of the land and cannot be equated with the possession much less the adverse possession. It is further the settled principle of law that the person proving the title is considered to be in possession of the vacant land as the possession follows the title.

21. In the instant case, there is absolutely no evidence to establish as to when the alleged possession of the appellants became adverse to the true owner. Rather, the appellants-defendants have themselves raised the plea in the written statement that on the basis of the objections raised by the father of the plaintiff, the matter was resolved in the village Panchayat and the appellants-defendants deposited the outstanding the loan of the father of the plaintiff with the bank. If this plea of appellants is accepted, that will simply show their permissive possession and not the adverse possession. It is further the settled principle of law that the permissive possession howsoever long it may be, it cannot be converted to be the adverse possession to the true owner. Thus, taking the case from any angle, the appellants-defendants have not been able to establish that they had acquired any title to the suit property by way of adverse possession.

22. The plea raised by the learned counsel for the appellants-defendants that the plaintiff has concealed the material facts carries no substance, because in the previous suit filed by the plaintiff, he has challenged the sale deed dated 03.07.1997 executed by his father in favour of respondents-defendants no. 5 and 6. That sale deed was with respect to different khasra numbers, whereas the main dispute in the present suit is with respect to khasra no.22(2-9). The non mentioning of the said litigation has no bearing on the merits of the present case.

23. Thus, keeping in view my aforesaid discussion, the plaintiff-respondent was certainly entitled for declaration along with relief of joint possession and consequential relief of permanent injunction on the basis of his title to the suit property. The plea of adverse possession raised by the appellants-defendants is not established. Thus, I have no reason to differ

with the well reasoned concurrent findings recorded by the learned Courts below.

24. The conclusion arrived at by the learned Courts below does not suffer from any legal infirmity or perversity.

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

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

16.12.2016

S.khan

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No

(DARSHAN SINGH)
JUDGE