

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

**R.S.A No.800 of 2016 (O&M)
Date of decision :26.08.2016**

Ninder Singh and others

..... Appellants

Versus

Sant Ram

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Ms.Satpreet Grewal Kapila, Advocate
for the appellants.

Mr. Sandeep Singh Deol, Advocate
for respondent.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 04.12.2015 passed by the learned Additional District Judge, Tarn Taran, whereby the appeal filed by appellants-defendants against the judgment and decree dated 07.08.2014 passed by the learned Civil Judge (Sr. Division), Tarn Taran, has been dismissed.

2. Plaintiff-respondent Sant Ram has filed the suit for possession with respect to the suit land measuring 6 Kanal 12 Marlas comprised of khasra no. 170//25/1 (6-12) situated in the revenue estate of village Chabhal Kalan, Tehsil and District Tarn Taran.

3. As per the averments in the plaint his father Jai Kishan was the owner of the suit land who has died on 24.05.2005. The suit property was inherited by plaintiff vide mutation no. 2709. Initially said Jai Kishan

has given the suit land for cultivation on share basis and lease at the rate of half share of the produce of crops to Jaswant Rai son of Mulakh Raj and Kundan Lal son of Diwan Chand. In the year 1994, they surrendered the tenancy orally. Thereafter, his father has given the land in similar manner to defendants. They have given the Hissa/Theka till Harhi 2010 and after that they had refused to give the same and they are alleging themselves as owner of the suit land on the basis of illegal entries in column no. 5 and 9 of the Jamabandies. Hence the suit.

4. Appellants-defendants contested the suit on the grounds *inter alia* that they are owner in possession of the suit land having purchased the same from Kundan Lal son of Diwan Chand and Moti Ram son of Kishan Chand vide agreement dated 12.07.1993 who were the owner in possession of the suit land as “Billa Lagan Tasawar Malkiat Khud” which was earlier in possession of Diwan Chand, the father of Kundan Lal. Neither the plaintiff nor his father ever remained in possession of the suit land. The possession over the suit land of Diwan Chand and his son Kundan Lal is continuous for the last 40 years without any interruption and it is open and hostile to the knowledge of the alleged owner Jai Kishan and especially his son Sant Ram, besides the whole world. The mutation of inheritance has been got fraudulently sanctioned by the plaintiff in connivance with the revenue department without any notice to the appellants-defendants. The suit land was Banjar Kadim. It was reclaimed by Diwan Chand and his son Kundan Lal by spending huge amount and through their hard work. Jai Kishan never filed any suit during his lifetime. With these pleas, appellants-defendants pleaded for

dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 03.10.2011:-

1. Whether the plaintiff is entitled to the possession as prayed for? OPP
2. Whether the suit is maintainable in the present for,?OPP
3. Whether the plaintiff has no locus standi to file the present suit? OPD
4. Relief.

6. On appreciating the evidence adduced by the parties and the contentions raised by their counsel, the learned trial Court decreed the suit filed by respondent-plaintiff vide impugned judgment and decree dated 07.08.2014.

7. Aggrieved with the aforesaid judgment and decree, appellants-defendants preferred the appeal. The same was also dismissed by the learned Additional District Judge, Tarn Taran, vide impugned judgment and decree dated 04.12.2015. Hence this Regular Second Appeal.

8. I have heard Ms. Satpreet Grewal Kapila, Advocate, learned counsel for the appellants, Mr. Sandeep Singh Deol, Advocate, learned counsel for the respondent and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellants contended that it is an admitted fact that in the Jamabandi Kundan Lal has been shown to be in possession of the suit land as “Billa Lagan Tasawar Malkiat Khud”. It shows that he was in adverse possession of the suit property since long and had become owner of the suit property by way of adverse possession. To support her contentions, she has relied upon cases

Kundan Singh and others Vs. Rai Singh and others 1983 P.L.J 159 and Bhupinder Nath (died) through Lrs. And another 2005(2) R.C.R (Civil) 335.

10. She further contended that as Kundan Lal had become owner of the suit property by way of adverse possession, so he was competent to transfer the suit land by way of agreement dated 12.07.1993. The present appellants-defendants have become the owner of the suit property on the basis of agreement dated 12.07.1993. Thus, she contended that the plaintiff-respondent is not entitled for the relief of possession.

11. On the other hand, learned counsel for the respondent contended that the plaintiff-respondent is the owner of the suit land. Prior to him, his father was the owner of the suit land. He is entitled to seek possession on the basis of title. The agreement set up by the defendants is unregistered and has no force of law. Moreover, Kundan Lal was not competent to alienate the suit property.

12. I have duly considered the aforesaid contentions.

13. As per copy of the Jamabandi for the year 2005-06 Ex.P-1 Jai Kishan, the father of plaintiff-respondent is recorded as owner of the suit land. The present plaintiff has acquired the ownership of the suit land by way of inheritance of said Jai Kishan and mutation no. 2079 has been sanctioned in his favour. Copy of Jamabandi for the year 2010-11 Ex.P-5 depicts the plaintiff-respondent to be the owner of the suit property. Even, the copy of Jamabandies produced by appellants-defendants right from the year 1975-76 till 2005-06 shows Jai Kishan son of Durga Dass, the father of plaintiff-respondent to be the owner of the suit land. On

demise of said Jai Kishan, the present plaintiff has become owner of the suit property by way of inheritance vide mutation no. 2079.

14. Appellants-defendants are claiming themselves to be the owner in possession of the suit property by dint of agreement Ex.D-1 dated 12.07.1993. But, even in the agreement Ex.D-1, the executant of the agreement has admitted the ownership of Jai Kishan, the father of plaintiff-respondent. Once in the agreement Ex.D-1, the executant thereof are admitting Jai Kishan, the father of plaintiff to be the owner of the land in dispute, then the claim of appellants-defendants that Kundan Lal had become owner of the suit property by way of adverse possession stands washed away. There is also no material on record to show that said Kundan Lal or his father Diwan Chand were ever conveyed the ownership rights qua the suit property in any legal proceedings on the basis of their alleged adverse possession. Even, in the revenue record, there is no entry showing them to be the owner of the land by way of adverse possession. Mere entry in the revenue record showing the possession of Kundan Lal as “Billa Lagan Tasawar Malkiat Khud” will not itself convey the ownership rights to said Kundan Lal. In order to acquire the ownership on the basis of adverse possession, all the ingredients of adverse possession has to be specifically proved. There can be no automatic acquisition of ownership on the basis of adverse possession. Moreover, Kundan Lal had already part away with the possession of the suit property even as per the admitted case of appellants-defendants. Thus, when Kundan Lal himself was not the owner of the suit property, then he was not competent to convey the

ownership rights to the appellants-defendants qua the suit property. Moreover, the agreement Ex.D-1 dated 12.07.1993 is an unregistered document. It cannot be disputed that value of the suit property was more than Rs. 100/-. So, agreement Ex.D-1 was compulsory registrable under section 17 of the Indian Registration Act, 1908. The unregistered agreement does not convey any title in favour of appellants-defendants. Taking the case from another angle, if Kundan Lal and before him his father Diwan Chand had acquired the ownership rights qua the suit property, then what was the hitch in executing the sale deed by them in favour of appellants-defendants instead of the unregistered agreement, which has no legal value. I have gone through the cases cited at bar by learned counsel for the appellants. But, those are quite distinguishable on facts.

15. Thus, keeping in view of my aforesaid discussion, plaintiff-respondent is proved to be owner of the suit land and he has every right to obtain the possession thereof from the appellants-defendants on the basis of his title.

16. Consequently, I have no reason to differ with the concurrent findings recorded by the learned Courts below.

17. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

August 26, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No