

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

**R.S.A No.642 of 2015 (O&M)
Date of decision :15.03.2016**

Babu Lal.

..... Appellant

Versus

Gram Panchayat, Gokalgarh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.K.S.Yadav, Advocate
for the appellant.

DARSHAN SINGH,J

CM No. 1877-C of 2015

There is delay of 222 days in re-filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, the application stands allowed and the delay of 222 days in re-filing the appeal is hereby condoned.

R.S.A No. 642 of 2015

This Regular Second Appeal has been directed by the plaintiff against the judgment and decree dated 06.12.2013 passed by the learned Additional District Judge, Rewari, vide which the appeal preferred against the judgment and decree dated 17.09.2012 passed by the

learned Civil Judge (Jr. Division), Rewari, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. As per the case of the plaintiff-appellant, he is a co-sharer in the property of Ahata No. 531 house no. 831 and Ahata 532 house no. 832 situated in village Gokalgarh, Tehsil and District, Rewari shown in green colour marked as 'IJGD' in the site plan. The defendants also have a share in the aforesaid properties, which is shown in the site plan in blue colour marked as 'ABHJI'. It was further pleaded that before the year 1947, the ancestors of the plaintiff were owner in possession of the aforesaid property. After that the plaintiff has been owner in possession of the aforesaid property. Ahata no.531 house no. 831 has been entered in the name of Ammi and Ahata no. 532 house no. 832 is entered in the name of Mohar Ali in the revenue record. But, both these persons are not residing in the village since many years. The plaintiff is owner in possession of the disputed property since the year 1947 and has become the owner thereof by way of adverse possession. It is further pleaded that though the defendants as well as said Ammi and Mohar Ali do not have any right, title or interest over the suit property, but defendant no.1 in connivance with defendants no. 2 to 4 wants to grab the suit property by using the Government machinery to oust the plaintiff. Earlier also the plaintiff-appellant filed the suit and the same was dismissed as withdrawn with permission to file the fresh suit. The plaintiff got issued a legal notice under Section 205 of the Haryana Panchayati Raj Act, but of no avail. Hence the suit.

4. The defendants-respondents contested the suit on the grounds *inter alia* that Gram Panchayat has constructed the cattle pounds in the suit property since the Panchayat came into existence. In the year 2007, plaintiff was appointed as a care taker for the cattle pounds. But, his work was not satisfactory and due to his misconduct he was removed from services. The Gram Panchayat is owner of the said cattle pounds. The plaintiff had never remained in possession thereof. Gram Panchayat is intending to change the user of the building of the cattle pound to Sanjivani building. The proceedings under Section 25 of the Panchayati Raj Act are also pending against the plaintiff. With these pleas, they 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 01.10.2009:-

1. Whether the plaintiff is entitled to the injunction as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD
3. Whether the civil court has no jurisdiction to entertain and try the suit? OPD
4. Relief.

6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit of the appellant-plaintiff vide impugned judgment and decree dated 17.09.2012.

7. Aggrieved with the aforesaid judgment and decree, appellant-plaintiff preferred the appeal and the same was also dismissed by the learned Additional District Judge, Rewari, vide impugned

judgment and decree dated 06.12.2013. Hence this Regular Second Appeal.

8. I have heard Mr. K.S.Yadav, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellant contended that the plaintiff is in possession of the suit property. Previously, the same was owned by Ammi and Mohar Ali, who had migrated to Pakistan. He further contended that earlier the predecessor-in-interest of the plaintiff were in possession and now the plaintiff-appellant is in possession of the suit property. The plaintiff has also perfected his title qua the suit property by way of adverse possession. Thus, the plaintiff being a co-owner in the suit property is entitled for injunction and his suit has been wrongly dismissed by the learned Courts below.

10. I have duly considered the aforesaid contentions.

11. It is the admitted case of the appellant that as per the revenue record Ammi was the owner of Ahata no. 531 house no. 831. Similarly, Mohar Ali was owner of Ahata no. 532 house no. 832. The plaintiff has claimed that he has become the owner of the suit property by way of adverse possession. Thus, he is claiming the injunction on the ground that he is in possession of the suit property as owner by way of adverse possession. It is settled principle of law that the plea of adverse possession is only available as a defence to the defendant in a suit for recovery of possession. No relief of declaration can be granted that plaintiff has become owner on the basis of adverse possession. Reference

can be made to cases **Bhim Singh and others Vs. Zile Singh and others 2006(3) R.C.R (Civil) 97, Prem Nath Wadhawan Vs. Inder Rai Wadhawan 1993(3) PLR 70 (Delhi High Court) and Jeet Singh (since deceased) through L.Rs Vs. Molu Ram (since deceased) through L.Rs 2010(2) R.C.R (Civil) 650.**

12. Moreover, there is no cogent evidence on record to establish any lawful possession of the plaintiff-appellant over the suit property except the oral evidence. He has simply placed on record the site plan. No other substantive evidence has been produced by him to establish his ownership and lawful possession over the suit property and the fact that since when he came in possession of the suit property.

13. In order to claim the relief of injunction, the plaintiff was required to establish his lawful possession. But, the case of the plaintiff-appellant is totally lacking in this regard. The evidence led by respondents-defendants shows that as per the document Ex.D-1, the Gram Panchayat has constructed a cattle pound in the suit property in the year 1958-59 and the plaintiff was appointed just as a care taker of the cattle pound. Various letters were written by the department to the plaintiff, which shows his unauthorized possession. The plaintiff has also sought the declaration claiming the title to the suit property on the basis of adverse possession and that plea is not available to him as per the legal position discussed above. Thus, the appellant-plaintiff has not been able to establish his lawful possession over the suit property to claim the equitable relief of injunction.

14. Thus, I have no reason to differ with the well reasoned

findings recorded by the learned Courts which do not warrant any interference by this Court in the Regular Second Appeal.

15. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

March 15, 2016

s.khan

(DARSHAN SINGH)
JUDGE