

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

**R.S.A No.48 of 2014 (O&M)
Date of decision :01.03.2016**

Manjit Singh and others

..... Appellants

Versus

Harbhagat Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Pritam Saini, Advocate
for the appellants.

DARSHAN SINGH,J

This Regular Second Appeal has been preferred by defendants no. 1 to 4 against the judgment and decree dated 19.07.2013 passed by the learned Additional District Judge, Roopnagar, vide which the appeal preferred against the judgment and decree dated 23.03.2013 passed by the learned Additional Civil Judge (Sr. Division), Roopnagar, has been dismissed.

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

3. The brief facts of the case set up by the plaintiff-respondent no.1 are that Megh Singh was the owner of the land in dispute, which was acquired by the State of Punjab and acquisition proceedings were

challenged by his father. Megh Singh executed the valid Will dated 04.07.1976, whereby he bequeathed 2/ 3rd share of the suit land in favour of Mohinder Singh, the predecessor in interest of the appellants and respondents no.2 and 3 and 1/ 3rd share was bequeathed in favour of the plaintiff-respondent no.1. The acquisition of the land in dispute was de-notified and was re-allotted to the owner. In the meanwhile, Megh Singh died in the year 1976. The dispute arose regarding the estate of Megh Singh. Harpal Singh etc. filed the suit titled as “Harpal Singh etc. Vs. Mohinder Singh.” The said suit was dismissed right up to the Hon'ble Apex Court. The Will executed by Megh Singh was held to be genuine. On the basis of the said Will, plaintiff is having 1/ 3rd share in the suit land. During the pendency of the Special Leave Petition before the Hon'ble Apex Court, Mohinder Singh (since deceased) suffered the collusive decree dated 20.07.1985 in favour of the appellants. The said decree is wrong, illegal, null and void and is hit by the rule of *lis pendens*. The same is liable to be set aside. Hence, this suit for joint possession and declaration.

4. Defendants contested the suit on the grounds inter alia that the acquisition proceedings were challenged by Megh Singh. Whole amount of litigation was spent by the father of appellants namely Mohinder Singh. Not even a single penny was spent by the plaintiff at that time. However, they admitted the valid execution of the Will dated 04.07.1976 by deceased Megh Singh bequeathing 2/ 3rd share of the suit property in favour of Mohinder Singh and 1/ 3rd share of the suit property to the plaintiff. They further pleaded that the plaintiff never claimed the

property in question in any manner nor he ever came in possession of the suit property. Whereas, the possession of appellants-defendants no1. to 4 is hostile, continuous, peaceful, true and uninterrupted. So, they have become the owner of the suit property by way of adverse possession. All other pleas raised in the plaint were controverted.

5. The plaintiff-respondent filed the replication. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for joint possessions on the basis of Will dated 4.7.1976?OPP
2. Whether plaintiff is entitled for declaration as prayed for?OPP.
3. Whether plaintiff is entitled for permanent injunction as prayed for?OPP
4. Whether the suit is not maintainable?OPD
5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD
6. Whether this Court has no jurisdiction to entertain and try the present suit?OPD
7. Whether plaintiff has not come to the Court with clean hands and suppressed the true facts from the Court?OPD
8. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD
9. Whether the suit is time barred?OPD
10. Relief.

6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit of the plaintiff-respondent no.1 vide impugned judgment and decree dated 19.07.2013.

7. The appeal filed by the appellants and performa respondents was also dismissed by the learned First Appellate Court. Hence this

Regular Second Appeal.

8. I have heard Mr. Pritam Saini, Advocate, learned counsel for the appellants and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellants contended that after the death of Megh Singh, the father of plaintiffs had contested the acquisition proceeding and spent money. Not even a single penny was contributed by the plaintiff-respondent. He further contended that the plaintiff-respondent has never laid his claim to the suit land. His suit for joint possession was not maintainable. He was required to claim declaration with respect to ownership. Without claiming declaration with respect to the ownership, he cannot claim to be in joint possession of the suit land.

10. He further contended that the suit filed by the plaintiff was time barred. Mohinder Singh (deceased) has suffered the decree in favour of the appellants on 20.07.1985. Plaintiff cannot challenge the decree on the ground of *lis pendens*, as he was not party to the previous litigation. The said decree could have been challenged within three years. But, the plaintiff has filed the suit on 11.03.2008 i.e. after about 23 years of the decree.

11. He further contended that as the plaintiff was out of possession, he was also required to seek the relief of possession. On that account also his suit was not maintainable.

12. He further contended that the appellants have become the owner of the suit property by way of adverse possession as their possession over the suit property was hostile, adverse, peaceful,

continuous, true and uninterrupted to the knowledge of the plaintiff. Thus, he pleaded that the learned Courts below had wrongly decreed the suit.

13. I have duly considered the aforesaid contentions.

14. This fact is not disputed that earlier the land in dispute was owned by Megh Singh, the father of plaintiff and Mohinder Singh, the predecessor-in-interest of the defendants. It is also not disputed that said Megh Singh has executed valid Will dated 04.07.1976, vide which he bequeathed 2/ 3rd share of the suit property in favour of Mohinder Singh and 1/ 3rd share in favour of the plaintiff-respondent. Both the parties are relying upon the Will dated 04.07.1976 executed by Megh Singh. Even, in the written statement filed by the defendants, the valid execution of the Will dated 04.07.1976 by deceased Megh Singh in favour of the plaintiff and Mohinder Singh is admitted. The validity of the Will was contested in the previous litigation filed by Harpal Singh and others against Mohinder Singh, which went up to the Hon'ble Apex Court and the Will dated 04.07.1976 upheld in that litigation. Thus, on the basis of the Will dated 04.07.1976, the plaintiff-respondent has become the owner of the suit land to the extent of 1/ 3rd share.

15. The judgment and decree dated 20.07.1985 passed in civil suit no. 107 dated 18.04.1985 is not binding on the rights of the plaintiff-respondent as admittedly he was not a party to the said suit. Moreover, when Mohinder Singh, the predecessor-in-interest of the defendants was having title only to the extent of 2/ 3rd share in the suit land, how he could have suffered the decree for the entire suit land including 1/ 3rd share of

the plaintiff. Thus, the decree dated 20.7.1985 was suffered by Mohinder Singh without title i.e. even with respect to the share of the plaintiff in the suit land and as plaintiff filed the present suit on the basis of title, so, it cannot be stated that the suit was barred by limitation. Moreover, it is an admitted fact that the litigation regarding the Will was finally decided by the Hon'ble Apex Court on 29.08.2007 and thereafter, the present suit has been filed. Plaintiff-respondent is claiming 1/ 3rd share in the suit land on the basis of the Will, which was finally upheld with the dismissal of the Special Leave Petition by the Hon'ble Apex Court on 29.08.2007. So, the suit filed on 11.03.2008, cannot be stated to be time barred by any stretch of imagination.

16. The plea raised by the appellants that they have become the owner of the suit property by way of adverse possession is also not established. It is an admitted fact the plaintiff-respondent was the co-sharer to the extent of 1/ 3rd share in the suit property. The Hon'ble Apex Court in case **Karnataka Board of Wakf Vs. Government of India and Ors. 2004(2) R.C.R (Civil) 702** has laid down as under:-

“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 Karnataka(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**).

17. In the instant case, the ingredients to establish the adverse possession as enumerated above by the Hon'ble Apex Court are not established. The defendants have not alleged or proved that on what date they came into possession of the suit property; what was the nature of their possession; when their adverse possession started; whether the factum of their adverse possession was to the knowledge of the plaintiff-respondent or not. Mere, this fact that the plaintiff-respondent was not in physical possession of the suit property as he was residing abroad will not establish adverse possession because it is settled principle of law that the possession of a co-sharer is deemed to be the possession on behalf of the other co-sharers unless there is a clear ouster by denying title of the co-sharers. To support this view, reference can be made to case **Md. Mohammad ali (Dead) by Lrs Vs. Sri Jagadish Kalita and Ors.**

2004(1) R.C.R (Civil) 682. Once the defendants are admitting the Will dated 04.07.1976 executed by Megh Singh bequeathed 1/ 3rd share of the suit land to the plaintiff-appellant, so they are not denying the title of the plaintiff-respondent. Thus, the plea raised by defendant-appellants that they have become the owner of the suit property by way of adverse possession is not established.

18. This Court does not find any defect in the form of the suit as the plaintiff has sought the relief of joint possession on the basis of title. When the execution of the Will dated 04.07.1976, in favour of the plaintiff-respondent was admitted, so, there was no need for him to seek the declaration regarding ownership. He was also not required to seek the relief of possession as he being co-sharer was deemed to be in the joint possession of the suit land to the extent of his share.

19. Thus, I have no reason to differ with the well reasoned findings recorded by the learned Courts below which do not warrant any interference by this Court in the Regular Second Appeal.

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

March 01, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**