

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-2136-1987(O&M)

Date of decision : 19.04.2017

Tejinder Singh and others

... Appellants

Versus

Isher Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Aftab Singh Bakshi, Advocate
for the appellants.

Mr. Rajinder Goyal, Advocate
for respondent no.1.

Mr. Deepak Bhardwaj, Advocate
for LR's of respondent no.7.

AMOL RATTAN SINGH, J.

This is the second appeal of the plaintiffs who had filed a suit seeking a decree of declaration to the effect that they have become owners in possession of the suit land measuring 4 bighas 15 biswas falling in khewat no.1668/575, khatauni no.2139, khasra no.3255/694 min, situated in Patiala, Tehsil and District Patiala, by way of adverse possession and therefore the 9 defendants (some of whom are respondents herein, as chose to appear in response to the notice issued in this second appeal, now represented by their legal representatives) have no right or interest in it.

2. The facts, as taken from the judgments of the learned courts below, are that the plaintiffs had contended that khasra no.694, measuring 6 bighas and 19 biswas, was previously owned by Maharaja Yadvindra Singh

of Patiala, and that the predecessor-in-interest of the 7 plaintiffs, i.e. father of plaintiffs no.1 to 6 and husband of plaintiff no.7, Sewa Singh, was in cultivating possession of the land as his tenant.

The land is stated to have been eventually declared to be surplus in the hands of Maharaja Yadvindra Singh and was allotted to one Pritam Singh of village Mana Khagtan on 18.02.1969, under the Utilization of Surplus Area Scheme, 1960, framed under Section 32-J of the Pepsu Tenancy and Agricultural Lands Act, 1955, upon payment of Rs.1226.70 as compensation.

Thereafter, Pritam Singh is stated to have sold the land allotted to him comprised in the aforesaid khasra no.694, to different persons on 19.02.1969, without taking possession of it from Sewa Singh and as such, Sewa Singh remained in possession of the disputed land till his death in February 1981. As per the plaintiffs, such possession with Sewa Singh was therefore in his own right.

As per the plaint, the defendants claimed to be transferees from Pritam Singh of the suit land comprised in the aforesaid khasra numbers, to the extent of 4 bighas and 15 biswas.

3. The plaintiffs claimed that in terms of para no.11 of the Utilization Scheme of 1960, Pritam Singh or his transferees were bound to take possession of the disputed land within one month from the date of the allotment and they not having done so, with Sewa Singh having continued to be in possession of the suit land, such possession was adverse to the ownership and possessory rights of the defendants for more than 20 years, on account of which Sewa Singh had become its owner by way of adverse possession.

It was further contended that Sewa Singh had also established a mushroom farm on the suit land and installed a tubewell and had built residential quarters for the labourers working on the farm and had also been paying electricity bills. Therefore, it was contended that he was in open and hostile possession to the full knowledge of the defendants for more than 12 years.

Yet further, it was contended that all attempts on the part of the defendants to recover possession of the disputed land were thwarted by the plaintiffs and their predecessor-in-interest, but with the defendants again wanting to take forcible possession, the suit was instituted on 07.10.1981.

4. Upon notice issued, defendants no.5 & 9, who are also respondents no.5 & 9 respectively before this court, i.e. Pavittar Singh son of Naranjan Singh and K.S. Sahni, Advocate, appeared before the Additional Senior Sub Judge, Patiala and filed separate written statements, with respondents no.1 to 4 and 6 to 8 not having contested the suit and having been proceeded against ex-parte.

5. In the written statement filed by Pavittar Singh, it was pleaded that Pritam Singh was allotted the disputed land and he (defendant no.5- Pavittar Singh) had purchased a part of it from the said allottee.

He obviously denied the fact that the plaintiffs or their predecessor in interest have become owners by way of adverse possession, further taking the plea that the suit was not maintainable and the plaintiffs had no locus standi either to file it.

Kuldip Singh Sahni, defendant no.9, in his written statement, stated that he took possession of the suit land on the day that the sale deed was executed in his favour on 16.07.1982 and that he continued to remain in

possession thereof. However the plaintiffs had got the entry in the khasra girdawari changed from the name of the vendor to their own name without impleading him (Kuldip Singh) before the revenue authorities, in the year 1984.

Further reiterating what defendant no.5 had stated, that the suit was not maintainable, the dismissal thereof was prayed for.

6. Though not shown in the judgment of the learned Sub Judge, however, as per the record of the Courts below, replications were filed by the plaintiffs, refuting the contents of both written statements and in the context of the written statement of defendant no.9, stating that the said defendant had not described as to how he had come in possession of the suit land and how he went out of it, with actually the plaintiffs continuing to be in possession thereof.

7. Upon the aforesaid pleading, the following issues were framed by the learned Additional Senior Sub Judge:-

“1. Whether the plaintiffs have become owners of the suit land by adverse possession as alleged?OPP

2. Whether the suit is not maintainable in the present form?OPD

3. Whether Kuldip Singh, defendant no.9 is in continuous possession of the suit land? If so, since when and its effect?OPD

4. Relief.”

8. Evidence was led on both sides in the form of production of all jamabandis and khasra girdawaris (records of rights and annual record respectively), on the basis of which it was found by that Court that in the jamabandi for the year 1966-67 and thereafter, Sewa Singh was only recorded to be in cultivating possession of the disputed land as a tenant

under the Maharaja and that subsequently the land had been declared to be surplus and was allotted to Pritam Singh, as per what was stated in the plaint.

It was also found that Pritam Singh had alienated the land allotted to him to different persons and in the jamabandi 1971-72, those persons were shown to be the owners, with Sewa Singh continuing to be shown as the person in cultivating possession as a tenant-at-will.

Thereafter, Sewa Singh's wife, i.e. plaintiff no.7, Jaswant Kaur, also purchased a part of the disputed land from the title holder and consequently in the jamabandi for the year 1976-77, she was shown as one of the co-sharers in the land.

It was also found that as a matter of fact khasra no.694 was split into different numbers, i.e. 3255/694 comprising 5 bighas and 10 biswas, 3250/694 comprising 0 bighas and 13 biswas and 3257/694, comprising 0 bighas and 10 biswas "etc.".

Sewa Singh was shown to be in cultivating possession of khasra no.3255/695 comprising 5 bighas and 16 biswas, with Jaswant Kaur and her co-sharers, i.e. vendees "from her", shown to be in cultivating possession of the remaining land described hereinabove.

9. The learned Sub Judge further found that Sewa Singh thereafter died and in the jamabandi for the year 1981-82 his widow and other heirs were shown to be in possession of a part of the land comprised in khasra no.3250/694 measuring 2 bighas and 15 biswas, while some vendees of land sold by Jaswant Kaur and other persons, were shown to be in possession of the remaining land. Original khasra no.694 was still further shown to be split up into smaller khasra numbers as per that jamabandi, with one

Paramjit Singh and others shown to be co-sharers in the disputed land. A sale deed dated 30.08.1980 was relied upon by the defendants, showing that Paramjit Singh thereafter had sold the suit land through his 'mukhtiar' (attorney), Des Raj, in favour of respondent-defendant no.5, Pavittar Singh, in khasra no.3255/694, to the extent of 6 biswas, equaling 300 square yards.

Similarly, one Bhupinder Kaur who was shown to be a co-sharer in the suit land in the year 1981-82 also sold her share in the aforesaid khasra number through her attorney, Pritam Singh, in favour of the aforesaid Pavittar Singh, who thus became co-sharer in the suit land, with the land purchased by Pavittar Singh having been separated from the land of other share holders, as reflected in the said jamabandi for the year 1981-82 (Ex.P12).

10. It was also found by the trial Court that respondent-defendant no.9 Kuldeep Singh had purchased the share of Shamsher Singh (respondent-defendant no.6), vide a sale deed dated 16.07.1982, Ex.DA, duly proved by the attesting witness of that deed, who appeared as DW2.

This witness (one Balwant Singh) and DW3, Joginder Singh, also testified that possession was delivered by the vendor to various persons of the locality at the spot.

Thus it was found that the plaintiffs were found to be in cultivating possession of only a part of the suit land as per the jamabandi aforesaid and that mutation entries had been made by the revenue authorities upon all such alienations made.

11. In the aforesaid background it was eventually held by the Additional Senior Sub Judge that with the predecessor in interest of the plaintiff, Sewa Singh, having admittedly been a tenant under the original

land owner, i.e. Maharaja Yadvindra Singh, and thereafter plaintiff no.8, Jaswant Kaur, mother of the other plaintiffs, having purchased part of the suit land, their possession of the suit land could not be held to be adverse to the interest of the true owners, with Jaswant Kaur having become a co-sharer in the suit property after the tenancy of her husband.

It was further held that even if Pritam Singh, i.e. the original allottee of the surplus land did not obtain physical possession of the disputed land, that still would not change the fact that neither Sewa Singh nor the plaintiffs remained in adverse possession of the land at any time.

12. Even while holding as above, a fact was noticed, to the effect that the plaintiffs had made an application for correction of the khasra girdawari (annual revenue record) and vide his order dated 03.02.1984, the Assistant Collector, 2nd Grade, Patiala, had ordered such correction in favour of the plaintiffs and an appeal filed against such order was also dismissed on 01.01.1985. Thereafter, with respondent-defendant no.5 Pavittar Singh having filed an application for partition of the suit land, the said proceedings were ordered to be stayed, in view of the pendency of the suit in the present lis.

13. Yet further, the learned Court also found that even as per DW4, Kuldip Singh, the plaintiffs were admitted to be in possession of the suit land for about 6 months prior to this witness' testimony. However, even the aforesaid two facts were held to not affect the case of the plaintiffs, because with their mother being a co-sharer in the suit land, even if they were found to be in actual possession, such possession, could not be held to be adverse to the title of the other co-sharers.

14. Consequently, the primary issue of whether the plaintiffs had

become owners of the suit land by way of adverse possession was decided against them.

The second issue of the maintainability of the suit was also decided against the plaintiffs on the same ground, that they being co-sharers, no suit declaring them to be owners by way of adverse possession could have been instituted.

15. On the issue whether defendant no.9, Kuldeep Singh, continued to remain in possession of the suit property, it was found on the basis of the testimonies of DWs2 and 3, read with the sale deed in the said defendants' favour, dated 16.07.1982 (Ex.DA), that Kuldeep Singh had actually come in possession of the suit property, but he himself having admitted that subsequently the plaintiffs had taken possession thereof, it was therefore held that even if Kuldeep Singh was out of possession, that again did not affect the case of the plaintiffs, Kuldeep Singh and they being co-sharers, with each entitled to get the suit land partitioned.

Hence, that issue was decided in the said manner.

16. On the aforesaid findings, the suit of the plaintiffs was dismissed by the learned Additional Senior Sub Judge, Patiala, vide his judgment and decree dated 02.11.1985.

17. The plaintiffs having filed an appeal before the learned Ist appellate Court, that Court also, after noticing the pleadings, the issues framed and appraising the evidence led before the learned lower Court, eventually came to the same conclusion as had that Court, while further noticing that in the jamabandi for the year 1966-67, Sewa Singh, i.e. the predecessor of the plaintiffs, was shown to be in cultivating possession of the suit land "bila lagan kabja zabar", i.e. not as a tenant but as a person in

forcible occupation.

Thereafter however, in the jamabandi for the year 1971-72 (Ex.P10), the lower appellate Court found that Ram Asra etc. were shown to be owners of the suit land, with Sewa Singh shown to be a 'ghair marusi' in column no.9.

In the next jamabandi, for the year 1976-77, plaintiff Jaswant Kaur and others were shown to be owners in cultivation, with Sewa Singh shown to be in possession of the khasra number in question, to the extent of 5 bighas and 17 biswas. Thus, as regards this 'jamabandi', the finding of the lower appellate Court was the same as that of the learned Sub Judge.

The factum of the allottee having sold land to the aforesaid Ram Asra and Paramjit Singh was noticed by that Court also, with the land having been further sold by the 8th plaintiff, Jaswant Kaur, also having been found to be a fact.

18. In the light of the aforesaid finding, the learned Ist appellate Court held that with Jaswant Kaur, wife of Sewa Singh, having come into possession of the suit land as a co-sharer during the life time of Sewa Singh, his possession could not be held to be adverse to the co-sharers.

On the aforesaid reasoning, giving further details of the sales and purchases made by various persons, the first appeal filed by the plaintiffs was also dismissed, vide a judgment and decree dated 15.11.1986, leading to the filing of the present second appeal.

19. When this appeal had first come up for hearing on July 03, 1987, while issuing notice of motion, a co-ordinate Bench had ordered that status quo would be maintained in the meanwhile, which order thereafter

was continued even after the appeal was admitted, vide an order dated 17.02.1988. In the meanwhile, it is seen that respondents no.5, 6 & 9 were proceeded against ex-parte, they not having appeared despite service shown to be effected upon them, with respondents no. 1 to 3, 7 & 8 having been given up as not necessary for the purpose of motion hearing, as recorded in the order dated 15.09.1987.

However, thereafter, it is seen that respondent no.5 was regularly represented by counsel, as was respondent no.9, right up to the time of admission of the appeal.

20. When the appeal came up for final hearing, learned counsel for the appellants was asked to frame the substantial questions of law, as would be arising in this appeal and accordingly the following questions had been framed, as learned counsel felt required adjudication upon:-

“a) While declaring the suit land as surplus area, whether provisions of Pepsu Tenancy and Agriculture Lands Act, 1955, were meticulously followed?

b) If it is proved that the provisions of the act were not followed and there were violations; whether allotment of suit land as surplus land was valid?

c) Whether the State of Punjab ever got possession of the land from Sewa Singh father of the plaintiff? And whether the land ever got vested in the Punjab State? If so how could the State ever treat it as surplus and how could the State allot it?

d) Whether allotment of the suit land to Pritam Singh, original allottee was valid? And did Pritam Singh allottee ever got possession of the suit land?

e) If Pritam Singh the original allottee never became a proper allottee nor a proprietor, how could he make a valid sale of the suit land to the present respondents/defendants nos. 1 to 4, 6, 7 and 9 who have

been proceeded against exparte both in lower Court and this Hon'ble Court?

f) Are respondents no.1 to 9 not trespassers and trying to interfere in the peaceful possession of the plaintiffs (who although they were originallly in adverse possession have acquired full ownership)?

g) The suit is not against owners His Highness Maharaja of Patiala or the Punjab State. Is this suit against fresh trespassers' not competent?

21. A perusal of the aforesaid questions framed by learned counsel for the appellants reveals that actually questions a) to d) relate to whether or not proceedings declaring the land to be surplus in the hands of the original land owner, i.e. Maharaja Yadvindra Singh of Patiala, were valid proceedings / whether the procedure as laid down in the Act of 1955 was properly followed or not while declaring the land to be surplus in the big land owners' hands, and whether subsequently the allotment of the land declared to be surplus was validly made to Pritam Singh, the vendor of the land to the respondents-defendants.

Though at the time when this issue had initially been raised by the learned counsel for the appellants, this Court had observed in its order as to why the State of Punjab should not be made a party to the suit even at this stage, with this Court invoking jurisdiction under Order 41 Rule 27 of the Code of Civil Procedure and thereafter summoning the record of the surplus land proceedings, after that, however, having partly heard the matter and having gone through and considered the judgments of the Courts below, as also having partly heard learned counsel for the parties, it was found that as a matter of fact, firstly, no such issue had even vaguely been raised before

with regard to the aforesaid contention now raised before this Court for the first time.

A perusal of the plaint filed in the suit shows that in paragraph 5 thereof it has been contended that as per para 11 of the Utilization Scheme of 1960 (framed under the Act 1955), an allottee or his transferees were bound to take possession of the allotted surplus land within one month of the date of the allotment made on 18.02.1969.

This fact has been duly noticed in the judgment of the lower Court, though, as already stated, no issue pertaining to the validity of the surplus land proceedings was framed.

22. Hence, in the opinion of this Court, the substantial questions of law which actually arise in this appeal (and on which arguments were addressed), are as follows:-

- (i) Whether, firstly, a suit seeking a declaration on the basis of adverse possession could have been filed by the plaintiffs, i.e. by those claiming to be in such adverse possession, or is that a plea that can only be taken by a defendant in a suit filed by a land owner, seeking possession of his land, on the basis of his title thereof?
- (ii) Whether the validity of the proceedings declaring the land to be surplus in the hands of a big land owner, under the provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955, can be gone into by a Civil Court and if so, would a plea in respect thereof be entertainable at the stage of second appeal, with no issue

having been framed at all in respect of the validity of such proceedings by the trial Court, without even an argument raised on the non-framing of such issues before the first appellate Court?

23. Though the first question raised is even more basic than the second, however since Mr. Bakshi, learned counsel for the appellants, argued at length on the issue that the proceedings to declare the land to be surplus in the hands of big land owners, and the subsequent allotment to Pritam Singh were vitiated, (the latter by his not taking possession of the suit property), the 2nd question of law framed above needs to be taken up first because the issue of considering those arguments would arise only if it is found that surplus land proceedings can be challenged by way of a civil suit, and by extension, in an appeal arising from such suit.

24. In this context, at the outset, Section 47 of the Pepsu Tenancy and Agricultural Lands Act, 1955, needs to be referred to and is consequently reproduced hereunder:-

“47. Bar of jurisdiction.- (1) No civil court shall have jurisdiction to settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, the Collector or the prescribed authority.

(2) No order of the Financial Commissioner, the Commissioner, the Collector or the prescribed authority made under or in pursuance of this Act shall be called in question in any court.”

Thus a bare perusal of the aforesaid statutory provision itself reveals that no proceedings initiated or concluded under the Act of 1955 can be subject matter of jurisdiction of a Civil Court. Hence once that is so,

obviously this Court, in civil appellate jurisdiction, would also not have jurisdiction to take cognizance of any alleged irregularities in those proceedings by which the suit land was declared to be surplus in the hands of a big land owner and was thereafter allotted to any person under any scheme framed under that Act.

This is other than the fact that in any case, other than raising an objection to the validity of the allotment made under the Utilization of Scheme 1960, on the ground that the allottee had not taken the possession of the land as was required to be done in terms of paragraph 11 of the said scheme, factually the surplus proceedings leading to the declaration of the land to be surplus in the hands of the big land owner were never sought to be themselves challenged in any case in the suit, (even presuming that on some ground such proceedings could have been challenged before the Civil Court).

In fact a perusal of the paragraph 2 of the plaint shows that as regards the surplus land proceedings themselves, they were accepted to be correct by the plaintiffs and it is only the allotment made thereunder, that was sought to be objected to, as per the averment made in paragraph 5 of the plaint.

25. Consequently, there being a specific bar on the jurisdiction of a Civil Court to go into the validity of any proceedings or any matter arising under the aforesaid Act of 1955, the argument raised before this Court with regard to such validity, cannot be even looked into by this Court, more so for the reason that such an argument has been raised for the first time in a second appeal.

No challenge to either the surplus land proceedings, or the

allotment of land thereafter, before the competent authority or this Court in its writ jurisdiction, has been brought to the notice of this Court, nor is any evidence seen to be led by way of evidence before the Courts below.

Hence question (ii) framed above is answered to the aforesaid effect, against the appellants-plaintiffs.

26. Coming to the first question of law framed, as to whether a plaintiff can take the plea of adverse possession to claim ownership and title to a suit property, no long discussion on that question is required any longer, in view of the judgment of the Supreme Court in ***Gurudwara Sahib vs. Gram Panchayat Village Sirthala and another (2014) 1 SCC 669***, wherein it has been held as follows:-

“In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable. There cannot be any quarrel to this extent that 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 are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

Thus, that issue is now well settled, to the effect that a plea of adverse possession on the basis of which title can be claimed to have been perfected by the person in such possession of a suit property, can only be taken by a defendant in a suit filed by the plaintiff; after which it would obviously have to be established by the defendant that he has actually been in such possession, open and hostile to the knowledge of the true owners,

owners, in terms of Article 65 Schedule to the Limitation Act 1963, which bars the institution of any suit by a person claiming possession of the suit property on the basis of his title or ownership thereto, if it is proved that the defendant has actually been in adverse possession for more than 12 years prior to the institution of the suit.

27. Consequently, it is held that the suit of the appellants-plaintiffs was actually not maintainable in the first place, they having sought a declaration, as plaintiffs, to the effect that they had become owners of the suit land by virtue of being in adverse possession of the same.

28. Having held that actually it would not be necessary at all to go into the other aspects of the findings of the Courts below, the suit itself being not maintainable, but suffice to say with those Courts having come to a finding of fact on the basis of evidence led in the form of jamabandis (Records of Rights), showing that one of the appellants-plaintiffs, i.e. plaintiff no.8, Jaswant Kaur, actually had purchased a share in the suit property after it had been sold by the original allottee, Pritam Singh, I agree with impugned judgments that possession by the remaining plaintiffs also cannot, on any yardstick, be held to be adverse to the true owners thereof, the remaining plaintiffs not being in adverse possession to their mother, who came to be a co-sharer in the property.

It need hardly be reiterated that all co-sharers are deemed to be joint owners of every square inch of the holding together held by them, until partition of suit property. No doubt, in certain circumstances even co-sharers can be held to be in adverse possession of a particular part of the property qua the other co-sharers, but no such special circumstances have been pleaded or argued by the appellants-plaintiffs and in fact it could not

have been so argued, with the appellant-plaintiff no.8 Jaswant Kaur having purchased a share in a joint holding which comprised the suit land, i.e. in khasra no.3255/694, as specifically found by the learned lower appellate Court also, as recorded in paragraph 10 of its judgment.

Therefore, to repeat, though the aforesaid issue actually need not be gone into by this Court, it already having been held that a suit seeking declaration of title to the suit property, on the basis of adverse possession thereof, is not maintainable by a plaintiff, yet since arguments in respect of alleged adverse possession were addressed before this Court to an extent, the aforesaid observation has been made by this Court, to the effect that the Courts below have not erred in holding that actually there was no question of any adverse possession by the plaintiffs or their father, because earlier he was a tenant on the property and thereafter plaintiff no.8, Jaswant Kaur became a co-sharer thereof till she sold some of her share.

29. Consequently, finding no merit in this appeal, it is dismissed, but in the circumstances, with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

April 19, 2017.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No