

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

RSA No.2217 of 1989
Date of decision :03.08.2017

Mohinder Kaur and another

...Appellants

Versus

Gurpargat Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amar Singh Sandhu, Advocate
for the appellants.

Mr. Atul Lakhanpal, Senior Advocate with
Mr. Arjun Lakhanpal, Advocate for the respondents.

ANIL KSHETARPAL, J. (Oral)

Defendants are in second appeal against judgment passed by
learned Additional District Judge, Amritsar dated 05.09.1989.

Plaintiffs had filed a suit for joint possession claiming
themselves to be owner of the property.

Defendant Nos.1 & 2 contesting the suit and pleaded that they
are in possession of the suit land for the last 25 years. Defendants set-up a
plea of adverse, hostile and notorious possession over the suit property.
Defendant Nos. 3 to 23 were proceeded ex parte as they did not contest the
suit.

Learned trial Court after appreciating the evidence available on
the file held that the suit filed by the plaintiff was barred by time. Learned
trial Court further held that the entries in the revenue record shows
possession of defendant Nos.1 & 2. Since plaintiffs have not challenged the
aforesaid entries, therefore, the suit filed by the plaintiff for joint possession
is not maintainable.

Plaintiffs have filed first appeal before the First Appellate Court. Learned First Appellate Court after re-appreciating the evidence and after examining the revenue record arrived at a finding that except land comprised in Khasra No.64/4/2 measuring 2 kanals, remaining land is *banjar kadim* (uncultivable). It has further been recorded that DW-1 has admitted that they have been grazing the cattles in the land. In other words, the Court recorded that except 2 kanals of land the remaining land is not cultivable.

Learned first appellate Court further recorded that since the land which is not cultivable and is a vacant site, therefore, the defendants cannot claim adverse possession. With these findings, learned First Appellate Court decreed the suit filed by the plaintiff except the land measuring 2 kanals comprised in Khasra No.64/4/2.

Defendant Nos.1 & 2 have filed the present appeal against judgment passed by learned Additional District Judge, Amritsar. Learned counsel for the appellants has contended that the possession of the defendants is proved to be for more than 20 years as per revenue record. The possession is open, hostile, continuous and to the knowledge of the plaintiffs. Therefore, defendant Nos. 1 & 2 have perfected their title by prescription of time.

Whereas learned counsel for the respondents has submitted that defendant Nos.1 & 2 have not pleaded as to when and how the possession of defendants became hostile. Learned counsel for the respondents has further pleaded that the land is *banjar kadim* (uncultivable). Therefore, the possession of the vacant land always be with the owner. Learned counsel for the respondents has further pleaded that grazing of cattle on a piece of land

would not give right and rice to acquire title by prescription of time.

I have carefully considered the arguments of learned counsel for the parties and with their able assistance, have gone through the judgments passed by the Courts below as well as the record of the case.

There is no challenge to the finding recorded by the learned first appellate Court that the land is *banjar kadim* except 2 kanals of land. It is the case of defendant Nos. 1 and 2 that they have been grazing cattle and occassionally used to cultivate some area. However, cultivation is not proved from the revenue record. Defendant Nos.1 and 2-appellants, have not pleaded the ingredients of acquiring title by way of prescription of time. One can acquire title by adverse possession only if his possession is forcible, unauthorised and hostile from a particular time which has not been pleaded in the present case.

Still further the land is *banjar kadim*, and it is not cultivable. The owner is always considered to be in possession of a vacant site. Merely, because defendants were using the land for grazing of cattles, the defendants cannot claim that they have perfected their title by way of adverse possession.

For the reasons recorded above, I do not find any reason to interfere with the judgment and decree passed by the learned Additional District Judge, Amritsar.

Accordingly, appeal is dismissed.

03-08-2017
sheetal/sahil

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No