

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

1. **RSA No.1940 of 1994 (O&M)**
Date of Decision: 11.01.2017

Harjit Singh **.....Appellant**
Vs
Smt. Ravinder Kaur **....Respondent**

2. **RSA No.1168 of 1994 (O&M)**

Smt. Ravinder Kaur **.....Appellant**
Vs
Harjit Singh **.....Respondent**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Gulzar Mohd., Advocate
for the appellant in RSA No.1940 of 1994 and
for the respondent in RSA No.1168 of 1994.

Mr. J.S. Brar, Advocate
for the respondent in RSA No.1940 of 1994 and
for the appellant in RSA No.1168 of 1994.

RAJ MOHAN SINGH, J.

[1]. Vide this common judgment RSA Nos.1940 and 1168 of 1994 are being decided as common facts are involved in both the appeals. For brevity, facts are being culled out from RSA No.1940 of 1994.

[2]. Defendant-Harjit Singh has filed this appeal against judgment and decree dated 29.10.2013 passed by Additional District Judge, Patiala whereby appeal filed against judgment

and decree dated 17.12.1991 passed by the Sub-Judge 1st Class, Patiala was partly accepted and it was declared that the plaintiff/respondent was residing in the house to the exclusion of the appellant/defendant being his wife and has a legal right to reside in the house as before. Decree for permanent injunction was also granted in favour of the plaintiff/respondent thereby restraining the defendant/appellant from dispossessing the plaintiff from the suit house otherwise than in due course of law.

[3]. Brief facts are that the plaintiff/respondent filed a suit for declaration to the effect that plaintiff was owner in possession of House No.83, Bank Colony, Patiala. Permanent injunction was also sought seeking to restrain the defendant from forcibly dispossessing the plaintiff from the suit house. Plaintiff was legally wedded wife of the defendant. One son and two daughters took birth from their wedlock. Defendant refused to maintain the plaintiff and children. Since the plaintiff was in service, therefore, she did not claim any maintenance for herself from the defendant. However, children claimed maintenance from the defendant, which was granted by the Court. Plaintiff occupied the house in the month of January 1975 and since then she was continuing in possession of the same. On the basis of uninterrupted possession, plaintiff claimed ownership of the house by adverse possession.

[4]. Suit was contested by the defendant. In view of other litigations pending in the Court at the relevant time, status of plaintiff being wife of the defendant was admitted. Three children having born from the wedlock was also an admitted fact. Daughters were living in their matrimonial house. Son Jasbir Singh was out of India. Defendant had admitted the award of maintenance to the children at the relevant time. Defendant submitted that the minor children had filed revision against the order of maintenance for enhancement and there was a compromise effected between the parties during pendency of that revision petition on 24.12.1974. As a result of that compromise, parties started living with the children in the house in question. Defendant denied that in the month of January 1975 and after passing of the above said order, plaintiff came to occupy the house in question forcibly, but the possession of the plaintiff was permissive and was joint with the defendant.

[5]. After filing of replication, both the parties went to trial on specific issues. Plaintiff appeared herself as PW-1 and also got examined Ravinder Kaur as PW-2, Gurminder Paul Singh as PW-3, Shanti Sarup as PW-4 and Surinder Kumar Depot Holder as PW-5. Besides leading oral evidence, documents viz. Ex.P-1 to Ex.P-9 in respect of payment of house tax etc. were also

tendered. On the other hand, defendant appeared himself as DW-1 and also examined Pritam Singh as DW-2. He also tendered documents Ex.D-1 to Ex.D-3 on record.

[6]. After appraisal of the evidence, trial Court found that the defendant was never living in the house. From the year 1980-86, plaintiff was found to be in forcible possession after breaking/opening the lock in the beginning of January, 1975. Defendant was not found to be residing in the house during this period. Defendant had admitted in his cross-examination that he was living in village Salaudi, Tehsil Samrala, District Ludhiana, where he was running a dairy and was involved in his business avocation of selling milk. He also admitted that he was doing farming in the village. It was also admitted by him that he visited the house for the last time in the month of November 1987. The sewerage connection was in the name of the plaintiff and plaintiff had paid the house tax. The documentary evidence viz. bills Ex.P-1 to Ex.P-9 also confirmed the possession of the plaintiff over the suit house. Ex.P-1 related to the payment of house tax paid by the plaintiff on 10.05.1976. The house tax prior to the year 1976 was also paid through bills.

[7]. Trial Court decreed the suit of the plaintiff for declaration to the effect that plaintiff was owner in possession of the suit house No.83 and also granted permanent injunction

restraining the defendant from dispossessing the plaintiff from the house in question vide judgment and decree dated 17.12.1991.

[8]. The lower Appellate Court reversed the finding of title based on adverse possession, as the relief of adverse possession was not open to the plaintiff as a weapon of attack. Necessary ingredients of adverse possession were missing and, therefore, the possession was not proved to be hostile to grant relief of adverse possession, which otherwise was available to the plaintiff, being a weapon of defence. Since the plaintiff was legally married wife of the defendant, therefore, plea of adverse possession was discarded by the Appellate Court. However the plaintiff was found to be living in the house prior to filing of the house to the exclusion of the defendant, therefore, possession of the plaintiff was established to the exclusion of the defendant over the house in question being a wife and she was held entitled to continue to live in the house as before. A decree for permanent injunction was granted and the defendant was restrained from dispossessing the plaintiff from the house except in due course of law.

[09]. I have heard learned counsel for the parties and have also perused the record.

[10]. Against the judgment and decree passed by the lower

Appellate Court, both the parties have come in appeal. The present appeal i.e. RSA No.1940 of 1994 has been preferred by the defendant against judgments and decrees passed by the Courts below. Whereas RSA No.1168 of 1994 has been preferred by the plaintiff against part reversal of the judgment and decree of the trial Court. In a way, in this appeal, plaintiff claims title over the property on the basis of adverse possession.

[11]. Following substantial questions of law have been framed by the learned counsel for the appellant:-

- “(i) Whether the suit for declaration on the basis of Adverse possession is maintainable?*
- (ii) Whether the Judgment and decree passed by the Courts below with regard to possession of the respondent/plaintiff is perverse and against the evidence available on record?*
- (iii) Whether respondent/plaintiff is entitled to permanent injunction especially when the property in question is not in her possession and suit for declaration on the basis of adverse possession is not maintainable?*
- (iv) Whether by filing a suit for declaration on the basis of adverse possession, ownership of defendant/appellant is admitted?*

[12]. Perusal of aforesaid questions of law would reveal that all the questions are revolving around the plea of adverse

possession taken by the plaintiff in the suit and whether the judgments and decrees of the Courts below were perverse in nature?

[13]. A mere possession or permissive possession does not demonstrate spectrum of adverse possession. For claiming adverse possession, the defendants must prove that their possession, is “*nec vi, nec clam, nec precario*”, i.e. peaceful, open and continuous. The possession should be actual, open, notorious, exclusive and continuous for the required time as provided in law. The necessary ingredients of adverse possession as enumerated in **Karnataka Board Wakf Vs. Government of India, 2004 (2) RCR (Civil) 702** are that the adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. A party claiming adverse possession must prove that his possession is “*nec vi, nec clam, nec precario*” i.e peaceful, open and continuous and it should 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 original owner and is actual, visible, exclusive, hostile and continues over the statutory period. Plea of adverse possession is not a pure question of law, rather it is a mixed question of law and facts. A person who claims adverse possession, must

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 other party (d) How long his possession had continued; (e) His possession was open and undisturbed. Plea of adverse possession has no equities rather this right has some instinct of piratical rights. The person has to plead from what date his possession became adverse, and he must disclose the necessary ingredients in his pleadings. Since the written statement filed by respondents is totally silent. There is no foundation on the aspect of adverse possession pleaded by the defendants in their written statement, therefore, the plea having been taken for the first time in arguments cannot be termed as a legal plea which can be raised at any stage. As earlier mentioned that plea of adverse possession is a mixed question of law and facts and therefore, it cannot be held to be a pure question of law.

[14]. The subject matter of RSA No.1168 of 1994 can be decided on the basis of latest position of law. Plea of adverse possession cannot be taken to be a ground to claim title by the plaintiff. At the most, the plea can be raised as a weapon of defence, therefore, the appeal filed by the plaintiff to claim title on the basis of adverse possession is totally unsustainable in law. So, therefore, question Nos.(i), (iii) and (iv) are answered

while dismissing the aforesaid appeal. Reference can be made to ***Gurudwara Sahib vs. Gram Panchayat Village Sirthala and another, 2013(4) RCR (Civil) 703.***

[15]. Only question No.(ii) remains to be answered along with part of question No.(iii). Perusal of the record would reveal that vide order dated 21.03.1990, application for amendment of the plaint was allowed by the trial Court. In the said order, it was noticed by the trial Court that in view of Ex.D-1 and Ex.D-2, it was apparent that plaintiff made a statement on 24.12.1974 before the Court of Additional Sessions Judge, Patiala, when both the revision petitions were dismissed and it was recorded that plaintiff was living with the defendant. Therefore, due to the mis-calculation the date of forcible possession was wrongly given as January 1974 because before 24.12.1974, there was no occasion for the plaintiff to come in forcible occupation of the house in question to the exclusion of the defendant. The amendment was allowed from the month of January 1974 to month of January 1975 in para No.4 of the plaint.

[16]. In the written statement to the amended plaint, filed by the defendant, it was specifically pleaded in para No.3 of the written statement on merits that vide order dated 24.03.1973, a sum of Rs.60/- per month was awarded towards maintenance of each child, but that order remained operative only for 4/5

months. Plaintiff was guardian of the children and she filed a revision petition against the order of maintenance and sought enhancement of maintenance allowance. A compromise was effected between the parties during pendency of the revision petition on 24.12.1974 and as a result of that compromise, parties started living together with the children in the house in question.

[17]. Plaintiff has not specifically denied the aforesaid stand of the defendant in the written statement while filing replication, rather replication was vague enough to counter the plea of compromise. In view of statement dated 24.12.1974 made by the plaintiff Ex.D-1 before the Additional Sessions Judge, Patiala, following order was passed on 24.12.1974 (Ex.D-3) itself:-

“This case was fixed for 29th January, 1975. on the application of the parties this case has been taken up today. Ravinder Kaur guardian of the petitioners has made a statement that she alongwith the petitioners minor children are now living with Harjit Singh respondent and that the petitioners now do not want to prosecute the revision. In view of the statement of Ravinder Kaur the revision petition is dismissed.

Pronounced.

Sd/-
ADDL. SESSIONS JUDGE
PATIALA”

Dated: 24.12.1971

[18]. Learned counsel for the appellant has vehemently

submitted that the appellant has left the premises in question and is earning rental from it, therefore, even injunction could not have been granted in favour of the plaintiff.

I am afraid, no such appreciation can be made in Regular Second Appeal for want of any evidence in the aforesaid context. Plaintiff was found to be in established possession on the basis of evidence on record. The decree granted by the trial Court was partially modified to the extent of dismissing suit for declaration of title on the basis of adverse possession. In view of documentary evidence on record viz. Ex.P-1 to Ex.P-6, possession of the plaintiff was established on record. No counter evidence was available on record. As per testimony of the witnesses, much less Harjit Singh himself, who had admitted in his cross-examination that he was living in village Salaudi, where he was running a dairy farm and was involving in his agricultural pursuit. The defendant also admitted that he had visited the house for the last time in the month of November 1987. Sewerage connection was in the name of the plaintiff and she was paying the house tax.

[19]. Documentary evidence viz. bills Ex.P-1 to Ex.P-9 confirmed the possession of the plaintiff in the house in question since the month of January 1975. Even the defendant admitted in his cross-examination that his name did not exist in the

voter's list mark 'A' and mark 'B. Ration card mark 'CD and E' also confirmed that the defendant was not shown in those documents. The dispute prior to the month of January 1975 was resolved between the parties by way of statement of compromise Ex.D-1 and order passed therein Ex.D-3. After the said compromise, plaintiff came in exclusive forcible possession of the house in question since the year 1975 and she remained in possession throughout as per the admission of the defendant that he last visited the house in question in the month of November 1987.

[20]. Plaintiff was living in the house as wife of the defendant and that relationship was never severed by any lawful means, therefore, I do not see any worth in the arguments of the learned counsel for the appellant to allege that decree for permanent injunction cannot be granted in favour of the plaintiff or the plaintiff had virtually relinquished her possessory right in favour of any other person. There was no misreading of evidence on record. On the basis of voluminous evidence, possession of the plaintiff was established in the suit house, therefore, question No.(ii) and part of question No.(iii) as formulated by learned counsel for the appellant do not arise for consideration by this Court.

[21]. In view of aforesaid, the impugned judgment and

decree passed by the lower Appellate Court cannot be faulted with on any of the grounds taken by the appellant in the Regular Second Appeal. Resultantly, both the appeals are dismissed, leaving the parties to bear their own costs.

January 11, 2017

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No