

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

**RSA No.1201 of 1999 (O&M)
Date of Order: 11.09.2017**

Jaimal

..Appellant

Versus

Puran Lal and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Mittal, Advocate,
for the appellant.

Mr. Manish Mehta, Advocate,
for respondents no.1, 3 to 5, 7 to 10, 11(2) & 11(3).

ANIL KSHETARPAL, J (Oral)

Plaintiff no.4 is the appellant in this regular second appeal. Plaintiffs filed a suit for declaration to the effect that the plaintiffs and defendants are owners in joint possession of the agricultural land measuring 08 kanals 03 marlas. Plaintiffs had also prayed for declaring the order passed by the Assistant Collector Ist Grade, Narnaul, dated 02.05.1979 to be wrong, illegal, null and void. Plaintiffs had also prayed for decree of possession.

Defendants in their written statement claimed that they are in possession of the suit property since 1962BK and therefore, possession being open, hostile, known to everyone has ripened into ownership by way of adverse possession.

Learned trial Court after framing of the issues granted opportunities to the parties to lead their evidence. Learned trial Court after appreciating the evidence available on the file, decreed the suit filed by the

plaintiffs. It was held that the plaintiffs along with proforma defendants and contesting defendants are joint owners in possession of the suit land being co-sharers. Learned trial Court also held that the order passed by the Assistant Collector Ist Grade, Narnaul, dated 02.05.1979 was illegal, null and void.

Defendants filed the first appeal. Learned first appellate Court reversed the findings of the trial Court on two grounds:-

- (i) the jurisdiction of the Civil Court is barred under Section 158 of the Punjab Land Revenue Act, 1887;
- (ii) the suit filed by the plaintiffs is time barred.

Plaintiff no.4 has filed the appeal and challenged the judgment passed by the learned first appellate Court.

Learned counsel for the appellant, at the outset, had submitted that the jurisdiction of the Civil Court is barred as far as challenge to order passed by the Assistant Collector Ist Grade, dated 02.05.1979, under Section 158 of the Punjab Land Revenue Act, 1887 and therefore, he does not press this issue.

However, he had submitted that the plaintiffs had filed a suit for declaration that the plaintiffs and the defendants are joint owners in possession of the property being co-sharers, such suit is not barred under Section 158 of the Punjab Land Revenue Act, 1887. He has further submitted that although the defendants had pleaded that they have become owner by prescription/adverse possession. However, the defendants failed to prove that fact as defendants are recorded as co-owners/co-sharers and “Gair Marusi” in the revenue record. He had further submitted that the

defendants have failed to prove on record that from which date the possession of the defendants became adverse to the plaintiffs.

On the other hand, learned counsel for the defendants has supported judgment passed by the learned trial Court and had submitted that since the exclusive possession of the defendants is proved for a period of more than 12 years before filing of the suit, therefore, the suit filed by the plaintiffs is barred by time.

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

In my opinion, two substantial questions of law arise for consideration in the present case:-

- (i) Whether a co-owner/co-sharer is entitled to take a plea of having become owner by way of adverse possession without their being any plea of ouster of other co-owners/co-sharers?
- (ii) Whether the suit filed by a co-owner for declaration declaring that all the co-owners are owners to be in joint possession can be held to be time barred?

QUESTION NO.(I)

Whether co-owner/co-sharer is entitled to take a plea of having become owner by way of adverse possession without their being any plea of ouster of other co-owners/co-sharers?

In case of co-owner/co-sharer, every co-owner/co-sharer is

deemed to be in possession of every inch of land. A co-owner can plead adverse possession only if he is able to prove ouster of the other co-owner, who is not in possession. In the present case, defendants have failed to prove that they have perfected their title by prescription of time. A look at the revenue record shows that parties are co-owners. Defendants are recorded as co-owners in the revenue record. Defendants have not led any evidence to prove that from which date their possession became adverse to the plaintiffs. In the absence of any such pleadings and evidence available on the file, learned first appellate Court was in error in dismissing the suit of the plaintiffs. For proving that a party has become owner by prescription of time, it is required to be pleaded as to which date, month or year the possession of the party has become adverse. In this case, pleadings are lacking, therefore, the findings of the first appellate Court are clearly erroneous.

QUESTION NO.2

Whether the suit filed by a co-owner for declaration declaring that all the co-owners are owners to be in joint possession can be held to be time barred?

The first appellate Court has held that the suit filed by the plaintiff is barred by time. Plaintiff had filed a suit claiming himself to be co-owner of the property. He had sought a declaration to this effect. He had pleaded that all the parties are co-owners in joint possession. The plaintiff has already given up his relief qua challenge to the order passed by the Assistant Collector Ist Grade, Narnaul, dated 02.05.1979. A suit for declaration that the parties are in joint possession, cannot be held to be time barred unless the defendants prove this fact to the satisfaction of the Court.

The first appellate Court has held that the suit is to be barred by time only on the ground that the order passed by the Assistant Collector Ist Grade, Narnaul, dated 02.05.1979 has been challenged. Once that a relief has been given up, the suit filed by the plaintiff cannot be held to be barred by time.

In view of the discussion made above, both the questions are answered in favour of the plaintiff. The judgment passed by the first appellate Court is set aside and that of the trial Court is restored. The regular second appeal is allowed.

September 11, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No