

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

RSA No.5019 of 2009 (O&M)

Date of decision : 21.08.2017

Ranbir and others

...Appellants

Versus

Harpal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. M.L. Sarin, Sr. Advocate with
Mr. Nitin Sarin, Advocate for the appellants.

Mr. Manjeet Singh, Advocate for the respondents.

ANIL KSHETARPAL, J.

Legal heirs of defendants are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiffs had filed a suit for possession. Banwari and Shanti i.e. brother and sister were owners of the land measuring 312 kanals and 11 marlas. The plaintiffs had claimed that the legal heirs of Banwari and Shanti sold their share to the plaintiffs vide registered sale deeds dated 04.05.1992 and 14.07.1995.

The defendants had filed a suit for declaring themselves to be owner by way of adverse possession. The aforesaid suit was dismissed by the Court on 10.06.1993. It was held that the possession of the defendants-appellants herein, was permissive. The defendants filed first appeal as well

as Regular Second Appeal. However, defendants did not succeed. First appeal and second appeal were ordered to be dismissed. The plaintiffs on the strength of the sale deeds claiming themselves to be owner of the property filed the present suit for possession of the aforesaid land.

In defence, defendants pleaded that the suit is barred by limitation. It was also asserted that Ami Lal was not the owner. Defendants further disputed the ownership of the plaintiffs. The defendants have also disputed the ownership of Banwari and Shanti. It was asserted that original owner was Ami Lal who had four heirs namely Banwari, Shanti, Bhagwati and Parsani. It was asserted that the plaintiffs have only purchased the property from Banwari and Shanti and not from all four.

The learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiffs vide judgment dated 25.05.2005.

Appeal filed before the First Appellate Court by legal heirs of defendants-appellants was also ordered to be dismissed. Learned First Appellate Court re-appreciated the evidence available on the file and upheld the judgment of the trial Court.

Learned counsel for the appellants has submitted that following substantial questions of law arise in the present case:-

- “(i) Whether suit is time barred especially qua two co-owners (Parsami and Bhagwati) who were not parties in the earlier suit and against whom no injunction order was issued?*
- (ii) Whether the Courts below have rightly applied the principle of estoppel against the defendant-appellant when*

the plaintiff-respondents had to stand on their own feet in the present case?

(iii) Whether the judgments and decree passed by the learned Courts below suffer from perversity and are not sustainable in law?”

Learned counsel for the appellants has further submitted that now the defendants-appellants have perfected their title by way of adverse possession as the injunction in the earlier suit filed by the defendants was only with respect to forcible dispossession and since the suit was not filed immediately, hence, the suit is barred by limitation.

Whereas learned counsel for the respondents has supported the judgments passed by the Courts below and has contended that there is concurrent findings of fact in favour of the plaintiffs and the questions of law as proposed do not arise in the present case.

Question No.1 is with regard to the limitation. The argument of learned counsel is that since Ami Lal was owner, he had four legal heirs namely Banwari, Parsani, Bhagwati and Shanti. The plaintiffs have purchased the property only from Banwari and Shanti. Therefore, the suit qua two co-owners namely Parsani and Bhagwati is barred by time.

I have heard the submission of learned counsel. However, the argument is entirely on a wrong assumption and foundation. After the death of Ami Lal, mutation of inheritance was sanctioned only in favour of Banwari and Shanti. The land in dispute is situated in Village Kari Thokha. The entire land measuring 312 kanals and 11 marlas was mutated in favour of Banwari and Shanti as per the mutation No.270 sanctioned on 20.07.1984 Ex.D39 on the record.

Still further, when defendants filed a suit claiming themselves to have become owner by way of adverse possession, it was filed only against Banwari and Shanti. The other two legal heirs were not party to the earlier suit and in the earlier suit, defendants did not dispute the ownership of Banwari and Shanti.

No doubt, legal heirs of Parsani did filed an application under Order 1 Rule 10 CPC to be added as party in the suit. However, the aforesaid application was dismissed by the trial Court. It is not the case of defendants-appellants that Parsani or for that matter Bhagwati ever claimed any right in the property thereafter.

In view of the discussion made above, the whole basis of the arguments of learned counsel for the appellants is factually incorrect.

The second question of law as pressed by the learned counsel for the appellants is with regard to the estoppel. However, during the course of arguments, no meaningful argument was addressed on this issue. The plaintiffs had filed a simplicitor suit for possession on the basis of ownership. In the previous litigation, the defendants were held to be in permissive possession.

The defendants did not dispute the ownership of Banwari and Shanti, therefore, the defendants-appellants have no locus to dispute the ownership of Banwari and Shanti and for that matter, the plaintiffs who are transferees. Hence, the defendants-appellants are estopped from disputing the complete ownership of the land in dispute situated in Village Kari Thokha, either Banwari or Shanti or the plaintiffs.

The third question of law is with regard to the perversity of the

judgments passed by the Courts below. However, learned counsel for the appellants has failed to estopped any perversity in the view taken by the Courts below.

Learned counsel has further submitted that the defendants-appellants had at least now perfected their title by way of adverse possession.

I have carefully considered the submission of learned counsel for the appellants. However, I am unable to agree. It is not in dispute that in earlier litigation, the defendants-appellants had filed a suit claiming themselves to have become owner by way of adverse possession. The learned trial Court found that the defendants-appellants were in permissive possession. Hence, the suit was dismissed on 10.06.1993. First Appeal filed by the defendants-appellants was dismissed on 05.03.1997 and Regular Second Appeal was dismissed on 20.11.1997. It is thereafter the plaintiffs who filed a suit for possession on 21.10.1998. Once a party has been held to be in permissive possession, the mere length of possession would not cloath such party to claim the ownership by prescription on time. The argument of learned counsel for the appellants is that in the earlier litigation, the injunction was only with respect to the forcible dispossession and the plaintiffs could have filed a suit for possession.

Article 65 of the Schedule attached to the Limitation Act provides for limitation of 12 years when the possession of the defendants become adverse to the plaintiffs. In this case, since the possession of the defendants has not become adverse, therefore, the suit filed by the plaintiffs who are owners is within limitation.

For establishing the ownership by way of adverse possession, defendants had to plead and prove that from which date their possession become adverse. They were required to specifically plead from which date their possession become open and hostile. Defendants were in litigation with the predecessors of the plaintiffs upto the year 1997 when the Regular Second Appeal was dismissed and the suit for possession was filed after about within a period of less than one year. Therefore, the submission of learned counsel for the appellants cannot be accepted.

Finding no error in the judgments passed by the Courts below, the present Regular Second Appeal is ordered to be dismissed.

Any pending miscellaneous application is disposed of in terms of abovesaid judgment.

21.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No