

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

RSA No. 1698 of 2013 (O&M)

DATE OF DECISION : 24.10.2017

Dharambir @ Dharam Dev and others

.... APPELLANTS

Versus

Kapil and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Harish Bhardwaj, Advocate,
for the appellants.

Mr. Vikram Punia, Advocate,
for the respondents.

* * *

AVNEESH JHINGAN, J.

The present regular second appeal has been filed by the legal representatives of plaintiff Kanhaiya Lal, being aggrieved of the concurrent findings of the learned courts below dismissing the suit for declaration.

The parties are being addressed as per their original position in the plaint.

The plaintiff preferred a suit for declaration asserting that the land comprising in khewat No. 533 min, khata No. 681, rectangle and killa Nos. 19/10/1 (2-10), 20/6/1 (5-18), 20/6/2 (2-0) and 20/7/1 (3-12) total measuring 14 kanal 0 marla situated in revenue estate of village Rohat, Tehsil and District Sonipat, is in his cultivating possession for last more

than 12 years without payment of rent to owner i.e. proprietors of *Shamlat Panna Khandwal Hasab Rasad Rakba Khewat*. It was averred that from the revenue entries, it is clear that possession of the plaintiff is forcible without payment of rent and is for more than 12 years without interruption. The plaintiff claimed ownership on the basis of adverse possession.

On notice, written statements were filed by defendants No.1 to 3 and defendants No.5 to 8. Defendant no.4 was proceeded against ex-parte.

Defendants No.1 to 3, in their written statement, admitted the claim of the plaintiff.

Defendants No.5 to 8, apart from raising preliminary objections, raised an issue that since the plaintiff was not in possession of the suit property, therefore, suit is not maintainable. On merits, it was pleaded that the revenue entries were result of collusion between the revenue department and the plaintiff. It was averred that the revenue entries were made without notice to the proprietors of *Panna Khandwal*. The forcible possession with animus hostile was also denied.

The learned trial court framed issues.

Plaintiff himself appeared in the witness box as PW.1 and examined Bhopal Singh (defendant No.3) as PW.2. Copies of the jamabandis for the year 2000-01, 1995-96, 1990-91 and 1985-86 were produced as Ex.P1, Ex.P2, Ex.P3 and Ex.P4, respectively. Khasra girdawaris for the periods from October 1986 to March 1991; October 1991 to March 1996; from October 1996 to March 2001; and October 2001 to

October 2003, were tendered as Ex.P5 to Ex.P8.

The defendants examined Ved Singh, Patwari, Halqa Harsana and Rohat as DW.1 and Ram Kishan defendant No.8 appeared as DW.2. The defendants tendered *rojnamcha* as Ex.D1 and jamabandi for the year 1980-81 as Ex.D2.

After considering the evidence and hearing learned counsel for the parties, the learned trial court dismissed the suit for declaration filed by the plaintiff.

Feeling aggrieved, the first appeal was filed by the legal representatives of the plaintiff, who died during pendency of the trial. The learned first appellate court dismissed the appeal vide judgment and decree dated 16.01.2013 and upheld the judgment and decree passed by the learned trial court.

Hence, this regular second appeal at the hands of the legal representatives of the plaintiff.

Two issues involved in the present appeal are :

- (i) Whether declaration of ownership can be claimed on the basis of adverse possession ?
- (ii) Whether the plaintiff was able to prove his uninterrupted adverse possession over the suit property, without any interference ?

Learned counsel for legal representatives of the plaintiff while arguing the appeal, instead of restricting himself to the four questions of law raised in the grounds of appeal, addressed arguments on the above referred

two issues.

Learned counsel for legal representatives of the plaintiff argued that from the revenue record produced before the learned trial court, the plaintiff was able to prove that he was in possession of the suit property for the last more than 12 years without any interruption and it was his hostile possession. It was further contended that the forcible possession started from harvest of kharif 1986 and possession of the plaintiff was known to the world at large including the proprietors. Learned counsel placed reliance upon the revenue record, wherein plaintiff is recorded to be in possession of the suit property as “*Bila Lagan Bawajah Jabardasti*”. He further argued that once it is established that the plaintiff was in adverse possession of the suit property for more than 12 years, the learned courts below should have decreed the suit for declaration declaring the plaintiff as owner of the suit property.

Learned counsel for defendants No.5 to 8 opposed the submissions made by learned counsel for the plaintiff, mainly on two grounds; firstly that entries in the previous jamabandis had been made without notice to the defendants, therefore, the said change is not binding on the defendants and the permissive possession cannot be termed to be hostile in such a manner. He further argued that the plaintiff had failed to prove his continuous and hostile possession. Secondly, learned counsel for defendants No.5 to 8 raised the plea that relief for declaration and ownership cannot be sought on the basis of adverse possession, as the plea

of adverse possession can only be taken as a defence.

I have heard learned counsel for the parties and perused the paper book with their able assistance.

Reliance of the plaintiff upon jamabandis for the years 1985-86 Ex.P4, 1990-91 Ex.P3, 1995-96 Ex.P2 and 2000-01 Ex.P1, khasra girdawaries for the periods from October 1986 to March 1991 Ex.P5; February 1991 to March 1996 Ex.P6; from October 1996 to March 2001 Ex.P7; and October 2001 to October 2003 Ex.P8, list of proprietors Ex.P9, khasra girdawaries for the periods from October 1976 to October 1981 Ex.P10, October 1981 to March 1986 Ex.P11 and October 2009 to March 2010, Ex.P12, does not prove his uninterrupted hostile possession over the suit property, though in column No.10 of the jamabandis Ex.P1 to Ex.P4, he has been recorded to be in possession of the suit property as “*Bila Lagan Bawajah Jabardasti*”. Khasra girdawaries Ex.P5 to Ex.P8 show possession of the plaintiff on the suit property and part of the suit property has been shown as *Banjar Kadim*. Ex.P10 shows that khasra No. 19/10/1 was in possession of Suresh Kumar and was shown to be *Gair Mumkin Khadan Bhatta*. Khasra No. 20/6/1 measuring 5 kanals 18 marlas was shown to be *Rasoli* under cultivation of Jawar and wheat crop and in possession of Suresh Kumar. It would be important to note that in March, 1986, possession over khasra No. 19/10/1 was shown to be of the plaintiff on account of brotherhood. The plaintiff did not claim himself to be gair marusi/tenant. His entire case is that from 1985-86, he was in adverse

possession of the suit property, but from the documents mentioned above, it stands proved that he was in possession of the same prior to 1985-86 as gair marusi tenant. In Ex.D3, one Suresh Kumar has been shown in possession of khasra No. 19/10/1, from whom the plaintiff took possession in the year 1986 on account of brotherly relationship. On the basis of this change of possession, the plaintiff claimed that as per the revenue record, he was in adverse possession of the suit property. DW.1 Ved Singh Patwari specifically deposed that as per the revenue record for the year 1985-86 and rapat rojnamcha register for the year 1986-87, possession of the suit property was changed without giving notice to the actual owners. In such circumstances, the plaintiff cannot place reliance upon the said documents to establish that he was having forcible possession of the suit property with notice to the proprietors and without their interruption. The plaintiff failed to prove his claim of continuous adverse possession after 1985-86.

The contention raised by learned counsel for the plaintiff that on the basis of adverse possession, suit for declaration ought to have been decreed, cannot be accepted.

The law is well settled that the plea of adverse possession can be taken as a defence and cannot be used as a sword to claim declaration of ownership.

The Hon'ble Apex Court in case reported as **Gurdwara Sahib Versus Gram Panchayat Village Sirthala and another**, (2014) 1 Supreme Court Cases 669, has held as under :-

“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.”

This court in **Bhim Singh and others Versus Zile Singh and others**, 2006 (3) RCR (Civil) 97, has held as under :-

“11. Under Article 64 of the Limitation Act, a suit for possession of immovable property by a plaintiff, who while in possession of the property had been dispossessed from such possession, when such suit is based on previous possession and not based on title, can be filed within 12 years from the date of dispossession. Under Article 65 of the Limitation Act, a suit for possession of immovable property or any interest therein, based on title, can be filed by a person claiming title within 12 years. The limitation under this Article commences from the date when the possession of the defendant becomes adverse to the plaintiff. In these circumstances, it is apparent that to contest a suit for possession, filed by a person on the basis of his title, a plea of adverse possession can be taken by a defendant

who is in hostile, continuous and open possession, to the knowledge of the true owner, if such a person has remained in possession for a period of 12 years. It, thus, naturally has to be inferred that plea of adverse possession is a defence available only to a defendant. This conclusion of mine is further strengthened from the language used in Article 65, wherein, in column 3 it has been specifically mentioned “when the possession of the defendant becomes adverse to the plaintiff”. Thus, a perusal of the aforesaid Article 65 shows that the plea is available only to a defendant against a plaintiff. In these circumstances, natural inference must follow that when such a plea of adverse possession is only available to a defendant, then no declaration can be sought by a plaintiff with regard to his ownership on the basis of an adverse possession.

12. to 17. x x x

18. It is apparent from the observations made by the learned First Appellate Court that the status of the plaintiffs had been described differently in different revenue entries and at some point of time the plaintiffs had even been described as mortgagees. In these circumstances, the plaintiffs have not been able to prove that their possession was adverse/hostile to the real owners and to the knowledge of such true owner.

A mere long possession cannot be taken to be an adverse possession.”

Further, this court following the aforesaid decision in **Bhim Singh's case** (supra) in **State of Haryana Versus Mukesh Kumar and others**, PLR (2009) 154, page 753, held as under :-

“In Bhim Singh's case (supra), this Court has authoritatively held that a suit for declaration by a person claiming ownership of immovable property by way of adverse possession is not maintainable. Learned counsel for the appellant was unable to cite any judgment contrary to this.”

In the aforesaid decisions, legal position enunciated is that suit for declaration by a person claiming ownership by way of adverse possession is not maintainable.

Claim of the plaintiff fails on both the grounds.

During the course of hearing, learned counsel for the appellants could not point out any illegality or perversity in the impugned judgment passed by the learned first appellate court. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

The cogent findings recorded by the learned first appellate court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgment and decree passed by the first

appellate court and the same deserves to be upheld.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant Regular Second Appeal is dismissed, however, with no order as to costs.

October 24, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes