

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

RSA No.2589 of 2013 (O&M)

Date of decision: 24.01.2017

Gopi Ram and others

... Appellants

Vs.

Sajjan Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Pritam Saini, Advocate
for the appellants.

Mr. Vijay Dalal, Advocate
for respondents No.1 & 2.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful plaintiffs are in their regular second appeal against the impugned judgments and decrees passed by learned Courts below, dismissing their suit for declaration with consequential relief of permanent injunction.

Facts necessary for disposal of the instant appeal and as recorded by learned First Appellate Court in para 2 of its impugned judgment, are that the plaintiffs have filed the suit on the ground that one Chhailu son of Mam Raj resident of Petwar, Tehsil Hansi, District Hisar was owner in possession of agricultural land pertaining to khewat No.67/69 khatoni Nos.312 to 316 measuring 90 bighas 14 biswas and 1/9th share of agricultural land measuring 11 bighas 19 biswas pertaining to khewat No.72 khasra No.1573, vide jamabandi for the year 1925-26.

Chhailu died issueless on dated 29.09.1926 and the land in question devolved upon his widow, viz. Nanhi. Mutation No.471 got sanctioned in her favour on dated 08.02.1927. After consolidation in the year 1952-53, the total land of Nanhi was complied as 204 kanals 15 marlas. Nanhi died in the year 1972. After her death, mutation No.196 dated 03.10.1973 was got entered and sanctioned secretly in favour of one Bhulla claiming herself to be of Nanhi widow of Chhailu. This mutation No.196 is liable to be set aside for being against the facts, null and void ab-initio, fraudulent, arbitrary and not binding on the rights of the plaintiffs and proforma defendants, on the following grounds: -

(a) Chhailu son of Mam Raj had died issueless, as a result of which mutation No.471 dated 08.02.1927 was entered and sanctioned only in the name of his widow Nanhi. The shijra-nasab for the years 1933-34 and 1941-42 also show Chhailu to have died issueless. (b) The plaintiffs and proforma defendants have been in cultivating possession as owners of the suit land after the death of Nanhi widow of Chhailu, who had died issueless for they are the defendants of Bhajan son of Mam Raj, the only real brother of Chhailu and as such were the only legal heirs of Chhailu. (c) The plaintiffs and proforma defendants were never served any notice before sanctioning the mutation No.196 on dated 03.10.1973 and as such the same was sanctioned at the back of genuine claimants and not binding on them. (d) The oral Shijra Nasab drawn on the impugned mutation while showing Bhulla, as daughter of Nanhi widow of Chhailu is wrong and against real facts. (e) Dewat Ram son of Nanha son of Bhajan had contested the mutation No.196 before A.C. 1st Grade but the

revenue officer did not grant any opportunity to the plaintiffs or proforma defendants or their predecessor-in-interest to lead any evidence. As such the sanctioning of mutation No.196 is against principles of natural justice. (f) The revenue official was not legally entitled to decide the question of title. (g) Even from the lifetime of Nanhi widow of Chhailu Ram (since deceased) Shish Ram @ Sisu, Tala @ Tale Ram, Chandgi and Dewat sons of Bhajan son of Mam Raj had been cultivating the suit land in the capacity of Bashrah Parta Malkan and never paid anything to Nanhi or anybody else. Likewise, the plaintiffs and the proforma defendants have also been cultivating the suit land as Bashrah Parta malkan and have thus become owners in possession of the same. (h) Question of law and fact was involved for effecting the impugned mutation and the same could not be decided by A.C. 1st Grade. (i) Similarly, the order dated 23.07.1974 passed by the Collector, Hisar, while dismissing the appeal is also illegal, null and void.

On the same grounds, the plaintiffs and proforma defendants have also called for declaring all the jamabandis subsequent to the impugned mutation as illegal, null and void and liable to be corrected in favour of the plaintiffs and proforma defendants. It is also alleged that the plaintiffs and proforma defendants have come to know that the defendants No.1 and 2 have got entered and sanctioned a mutation No.1412 dated 14.10.2006 to inherit the property of Bhulla alleged daughter of Nanhi widow of Chhailu and as such this subsequent mutation is also liable to be set aside.

After pleading regarding accrual of cause of action, jurisdiction and valuation of the suit, the plaintiffs have prayed for a decree for declaration to

the effect that plaintiff No.1 be declared owner in possession of 1/16th share, plaintiffs No.2 to 6 of 1/16th share in equal, plaintiff No.7 of 1/16th share, plaintiffs No.8 to 12 of 1/16th share in equal, plaintiff No.13 of 1/16th share, plaintiffs No.14 to 17 of 1/16th share in equal, plaintiffs No.18 to 20 of 1/16th share in equal, plaintiffs No.21 to 23 of 1/16th share in equal, plaintiffs No.24 to 26 of 3/16th share in equal, plaintiffs No.27 to 29 of 1/16th share in equal and proforma defendants No.3 to 5 of 1/4 share in equal, for being the original legal heirs of Nanhi widow of Chhailu son of Mam Raj and to the effect that the plaintiffs and proforma defendants are legally entitled to get the revenue record corrected in their favour and defendants No.1 and 2 be restrained from getting the revenue record altered in their favour on the basis of mutation No.196 and from alienating the suit property to any person in any way or manner.

Having been put to notice, defendants appeared before the learned trial Court and filed their contesting written statement, raising more than one preliminary objections, including qua the non-maintainability of the suit, lack of locus standi and cause of action, suit being barred by limitation, suppression of true and material facts etc. Plaintiffs filed their replication. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiffs are entitled to the relief of declaration as well as injunction as prayed for by them with respect to the disputed land on the grounds so sanctioned in the plaint?
OPP
2. Whether the plaintiffs have no locus-standi and cause of action to file the present suit? OPD.

3. Whether the present suit is barred by limitation? OPD.
4. Whether the suit is not maintainable in the present form?
OPD
5. Relief.

In order to prove their respective pleaded case, both the parties led their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiffs have failed to prove their case. Plaintiffs were not found having any case either on facts or in law. Plea of adverse possession was not found available with the plaintiffs-appellants, relying upon the law laid down by this Court on the non-availability of plea of adverse possession with the plaintiffs, learned trial Court dismissed the suit of the plaintiffs vide its impugned judgment and decree dated 31.10.2008.

Feeling aggrieved against the abovesaid impugned judgment and decree passed by learned trial Court, plaintiffs filed their first appeal, which came to be dismissed by learned First Appellate Court, vide its impugned judgment and decree dated 22.03.2013, upholding the abovesaid judgment and decree of the learned trial Court. Hence this regular second appeal at the hands of the plaintiffs.

Heard learned counsel for the appellants as well as learned counsel for the caveators-respondents/defendants.

Learned counsel for the appellants, while challenging the findings recorded by the learned Courts below, submits that mutation confers no title. Placing reliance on a Division Bench of this Court in **Mohinder Singh died**

and rep. by his LRs and another Vs. Kashmira Singh, 1985 PLJ 82, learned counsel for the appellants submits that suit for possession on the basis of inheritance filed by the appellants would not be time barred, because no period of limitation is prescribed for such a suit. He also places reliance on judgment of this Court in **Harnam Kaur and others Vs. Malkiat Singh and others, 1986 PLJ 687**, to contend that removal or non-inclusion of names of the plaintiffs from revenue records, at the instance of other co-sharers-defendants herein, will not disentitle the appellants from claiming their possession on the basis of inheritance. Finally, placing reliance on the judgments of the Hon'ble Supreme Court in **Gaya Parshad Dikshit Vs. Dr. Nirmal Chander and another, AIR 1984 Supreme Court 930**, **Indira Vs. Arumugam, 1998 (1) SCC 614** as well as judgment of this Court in **Harnam Kaur Vs. Malkiat Singh, 1989(1) RRR 475**, learned counsel for the appellants concluded that the plaintiffs-appellants in their suit for possession based on title, could not have been non-suited, because they have duly established their title by producing voluminous documentary evidence on record, which has not been properly appreciated by the learned Courts below. He prays for setting aside the impugned judgments and decrees, by allowing the present appeal.

Per contra, learned counsel for the caveators-respondents/defendants vehemently contended that appellants-plaintiffs miserably failed to prove their case. They concealed material facts from the notice of the learned Courts below. Mutation No.196 dated 03.10.1973 Ex.P5 came to be rightly entered and sanctioned, on the basis of inheritance and in the presence of predecessors-in-interest of plaintiffs No.24 to 29. Not only that, said

mutation was challenged by the predecessors-in-interest of the plaintiffs-appellants by way of appeal before the higher revenue authorities, but they remained unsuccessful. He further submits that none of the judgments relied upon by learned counsel for the appellants are applicable to the facts of the present case, because it was not a simple suit for possession on the basis of inheritance, but the plaintiffs-appellants filed a suit for declaration with consequential relief of permanent injunction and that too after a gap of more than 32 years, when the impugned appellate order dated 23.07.1974 Ex.D2 was passed by the competent authority, dismissing the appeal Ex.D1 filed by the predecessors-in-interest of the plaintiffs-appellants. Learned counsel for the caveators-defendants would next contend that plea of adverse possession was not available to the plaintiffs-appellants and taking the plea of adverse possession on their behalf would amount that they were admitting the ownership of defendants-caveators qua the suit land. Learned counsel for the respondents submits that the suit of the plaintiffs-appellants was hopelessly time barred and they also suppressed material facts from the notice of the learned Courts below and did not reach the Court with clean hands. He prays for dismissal of the appeal with exemplary costs.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case noticed hereinabove, present appeal is without any merit and the same is liable to be dismissed. The impugned judgments and decrees passed by the learned

Courts below have been found based on cogent findings duly supported by sound reasons and the same deserve to be upheld, for the following more than one reasons.

Appellants being the plaintiffs, onus was on them to prove their case as to whether they were entitled for the relief of declaration as well as injunction qua the suit land. However, the plaintiffs-appellants have failed to discharge their onus on issue No.1. Although they produced voluminous evidence on record before the learned trial Court, yet the same fell short to prove the pleaded case of the plaintiffs. While recording its cogent findings on abovesaid issues No.1 and 3 together, learned trial Court rightly held that the predecessors-in-interest of the plaintiffs were very well aware about the mutation proceedings, because they challenged the same by way of appeal Ex.D1, which was dismissed by the learned competent authority vide order dated 23.07.1974 Ex.D2, upholding the mutation dated 03.10.1973 Ex.P5 (wrongly typed in the judgment as 23.10.1973). This material evidence brought on record by the defendants belied the primary contention raised on behalf of the plaintiffs. Again, since the plaintiffs filed the suit for declaration after an inordinate long and unexplained period of 32 years, after passing of the appellate order Ex.D2, their suit was rightly held hopelessly time barred.

Similarly, while recording its findings on issues No.2 and 4 together, learned trial Court decided both these issues against the plaintiffs, holding that neither the plaintiffs had any locus standi nor there was any cause of action in their favour to file the suit, which was held not maintainable in the present form. Thus, recording its well reasoned findings on all the abovesaid

issues in favour of the defendants and against the plaintiffs, learned trial Court was well within its jurisdiction to dismiss the suit of the plaintiffs, vide its impugned judgment and decree dated 31.10.2008.

Feeling aggrieved, plaintiffs filed their first appeal, which was also rightly dismissed by the learned First Appellate Court by its self-contained impugned judgment and decree dated 22.03.2013 and the same deserve to be upheld. It is so said because learned Additional District Judge reconsidered and appreciated factual as well as legal aspect of the matter on all the relevant issues, before arriving at just conclusion. The findings recorded by learned First Appellate Court, affirming the view taken by learned trial Court, have been found duly supported by sound reasons and the impugned judgment and decree passed by learned First Appellate Court deserve to be upheld, for this reason also.

So far as the judgments relied upon by learned counsel for the appellants are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, none of them has been found of any help to the appellants, being distinguishable on facts. It is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausund Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275**

and **State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in **Ganeshi Lal's** case (supra), reiterating its earlier view taken in **Amrit Lal Manchanda's** case (supra) and **Mohd. Illiyas's** case (supra), which can be gainfully followed in the present case, read as under:-

“11. “12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason

or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without

discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V.

Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance

to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India Vs. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

By now, it is the settled proposition of law that plea of adverse possession is not available to the plaintiffs. Plea of adverse possession can be used only as a weapon of defence by the defendants and not as a weapon of offence by the plaintiffs. Regarding the non-availability of plea of adverse possession to the plaintiffs, this Court in **Bhim Singh and others Vs. Zile Singh and others, 2006 (3) RCR (Civil) 97** in paras 11 and 15, held as under: -

"Under Article 64 of the Limitation Act, as 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 field 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.

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Therefore, it must follow that the intention behind Article 65 is clear and unambiguous i.e. not to provide any period of limitation for a suit for possession by a plaintiff on the basis of title, however, at the same time by providing a defence to a defendant of adverse possession. The defendant in such a defence would have to prove the aforesaid factum of adverse possession and, naturally, the onus of proving the aforesaid defence would be upon the defendant. The reason behind the intention of the

Legislature is very clear. If a defendant is able to establish his adverse possession, then the very title of the plaintiff to the property is extinguished. But for the aforesaid defence of adverse possession, a plaintiff has no restriction of limitation to seek possession of immovable property on the basis of his title.”

Concept of adverse possession fell for consideration of the Hon'ble Supreme Court in **Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan and others, 2009 (16) SCC 517**. After a detailed discussion on the issue, the Hon'ble Supreme Court in paras 22 and 23 of its judgment laid down the law as under: -

*“In a relatively recent case in **P.T. Munichikkanna Reddy and others Vs. Revamma and others, 2007 (2) RCR (Civil) 847 : (2007) 6 SCC 59]** this court again had an occasion to deal with the concept of adverse possession in detail. The court also examined the legal position in various countries particularly in English and American system. We deem it appropriate to reproduce relevant passages in extenso. The court dealing with adverse possession in paras 5 and 6 observed as under:-*

*"5. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. [See **Downing v.***

Bird 100 So. 2d 57 (Fla. 1958), Arkansas Commemorative Commission v. City of Little Rock 227 Ark. 1085 : 303 S.W.2d 569 (1957); Monnot v. Murphy 207 N.Y. 240, 100 N.E. 742 (1913); City of Rock Springs v. Sturm 39 Wyo. 494, 273 P. 908, 97 A.L.R. 1 (1929).]

6. *Efficacy of adverse possession law in most jurisdictions depend on strong limitation statutes by operation of which right to access the court expires through effluxion of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or color of title. (See American Jurisprudence, Vol. 3, 2d, Page 81). It is important to keep in mind while studying the American notion of Adverse Possession, especially in the backdrop of*

Limitation Statutes, that the intention to dispossess can not be given a complete go by. Simple application of Limitation shall not be enough by itself for the success of an adverse possession claim."

*There is another aspect of the matter, which needs to be carefully comprehended. According to Revamma's case, the right of property is now considered to be not only a constitutional or statutory right but also a human right. In the said case, this Court observed that "Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment, etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English Courts is quite visible from the judgments of **Beaulane Properties Ltd. v. Palmer (2005) 3 WLR 554** and **JA Pye (Oxford) Ltd. v. United Kingdom (2005) 49 ERG 90**. The Court herein tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights."*

Again, in a recent judgment in **Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and another, 2014(1) SCC 669**, the Hon'ble

Supreme Court in para 7 of its judgment, held as under: -

“In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable. There cannot be any quarrel to this extent 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 filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence. “

Learned First Appellate Court in paras 11, 12 and 13 of its impugned judgment recorded cogent findings, after due appreciation of the facts and evidence available on record, in the correct perspective. The relevant findings recorded by learned First Appellate Court, which deserve to be noticed here, read as under: -

“..... In the present case, there is no dispute between the parties that Sh. Chhailu son of Mam Raj resident of village Petwar died on 29.9.1926 and mutation No.471 Ex.P4 in respect of land in question was entered and sanctioned in favour of his widow Smt. Nanhi (now deceased) on 8.2.1927. It is also not disputed that Nanhi died in the year 1972. At the time of arguments, it was not disputed by learned counsel for the parties that after consolidation in the year 1992-93, the total land of Nanhi was measuring 204 kanals 13 marla. The plaintiffs-appellants in their plaint alleged

that after the death of Smt. Nanhi mutation No.196 dated 3.10.1973 Ex.P5 was got entered and sanctioned in favour of one Bhulla, who claimed herself to be daughter of Nanhi wd/o Chhailu and this mutation is liable to be set aside being against the facts, null and void ab initio, fraudulent, arbitrary and not binding upon the rights of the plaintiffs on the grounds mentioned in the plaint and the plaintiff and proforma defendants are liable to be declared as owners in possession of the suit land being the legal heirs of Smt. Nanhi. The plaintiff has also prayed that order dated 27.7.1974 passed by the then Collector, Hisar vide which the appeal was dismissed is also liable to be declared as null and void, arbitrary and not binding upon the rights of the plaintiffs and proforma defendants and revenue record prepared on the basis of impugned mutation Ex.P5 since 1972-73 till date is also liable to be corrected.

Perusal of mutation Ex.P5 reveals that the said mutation was taken up for proceeding in Jalsa-e-Aam and Devat Ram son of Nanha son of Bhajan, predecessor-in-interest of plaintiffs No.24 to 29 was present there and he raised objection regarding sanctioning of said mutation in the presence of one Fateh Singh, Namberdar and therefore, mutation was sent to A.C. Ist Grade for decision being contested one. Perusal of entries on the backside of mutation Ex.P5 reveals that in the Jalsa-e-Aam Bhulla (since deceased) and her son Sajjan i.e. defendant No.1 were present

from one side and Devat Ram, Hawa Singh, Phool Singh, Dharampal and C.P. Chaudhary Advocate for Chandgi and Devat Ram, were present from other side. Admittedly, said Chandgi was the father of proforma defendants No.3 to 5. As per Ex.P5 after hearing both the side, the then A.C. Ist Grade held that Smt. Shulla (predecessor-in-interest of defendants No.1 and 2) was daughter of Chhailu and was entitled to succeed the estate of Chhailu and therefore, mutation Ex.P5 was sanctioned in favour of Smt. Bhulla vide order dated 23.10.1973, as mentioned on backside of Ex.P5. Perusal of order dated 23.10.1973 mentioned in Ex.P5 passed by the then A.C. Ist Grade, Hansi, reveals that predecessor-in-interest of the plaintiffs as well as proforma defendants were given proper opportunity of being heard before passing the said order.

Perusal of certified copy of appeal Ex.D-1 and certified copy of order dated 23.7.1974 Ex.D2 reveals that an appeal was preferred by Bhartu, Hawa Singh, Gopi Ram, Phool Singh, Ram Chander, Manphool, Dharampal, Ram Kumar and Bhartu i.e. plaintiffs or their predecessors-in-interest against the order dated 23.10.1973 passed by the then Asstt. Collector Ist Grade, Hansi as mentioned in Ex.P5 before the then Collector, Hisar, which was dismissed by Sh. H.B. Goswami, IAS, the then Collector, Hisar vide order dated 23.7.1974. There is nothing on record to suggest that order dated 23.7.1974 Ex.D2 was challenged by the plaintiffs, proforma defendants or their predecessors-in-interest before any

competent authority or Court and accordingly, the same has attained finality.

The plaintiffs in their plaint have alleged that they were not having any knowledge or notice of the impugned mutation Ex.P5. But the said plea of the plaintiff is not sustainable. Perusal of copy of appeal Ex.D1 and copy of order dated 23.7.1974 Ex.D2 makes it clear that the plaintiffs and their predecessors-in-interest were having knowledge about the impugned mutation Ex.P5. No cogent evidence has been placed on record by the plaintiffs to prove that they or their predecessor-in-interest did not put their thumb impression on the appeal dated 30.12.1973, certified copy of which is Ex.D-1. The plaintiffs have also not examined Sh. C.P. Chaudhary, Advocate, who appeared on behalf of the plaintiffs or their predecessors-in-interest at the time of contesting the sanctioning of mutation Ex.P5 and Ajeet Singh Malik, Advocate, who filed appeal Ex.D1 before the then Collector, Hisar. It is not the plea of the plaintiffs that the aforesaid Advocates were not alive when the suit was fixed for leading of evidence by the plaintiffs before ld. Trial Court. The plaintiffs have thus withheld the material evidence and therefore, adverse inference is liable to be drawn against them.

Admittedly, after sanctioning of mutation Ex.P5 the same was incorporated in the subsequent revenue record. Perusal of record of ld. Trial Court reveals that the plaintiff filed the present

suit on dated 28.10.2006 i.e. after a gap of more than 32 years from the date of passing of impugned order dated 23.7.1974 Ex.D2. It is well settled law that suit for declaration can be filed within the period of three years from the date when cause of action to file the same arises. The present suit has been filed by the plaintiffs for declaration with consequential relief of injunction. The suit of the plaintiffs is hopelessly time barred because the plaintiffs have not sought the declaration as claimed by them in the present suit within the period of three years from the date of passing the impugned mutation Ex.P5 and order Ex.D2 despite the fact that the plaintiffs or their predecessors-in-interest were having knowledge about sanctioning of mutation Ex.P5 and passing of order Ex.D2, as already discussed. The plaintiffs in their plaint have pleaded that cause of action to file the present suit arose on 15.10.2006. But the said plea of the plaintiffs is not sustainable because in view of the above discussion plaintiffs or their predecessors-in-interest were having knowledge about sanctioning of mutation Ex.P5 and passing of order Ex.D2 and therefore, they must have filed the present suit within three years from the date of passing of order Ex.D2. It is well settled law that any suit barred by limitation is liable to be dismissed.

It is also pertinent to mention here that the plaintiffs have also claimed ownership of the suit property on the ground that they are in possession of the suit property on the ground that they are in

possession of the suit land since the lifetime of Smt. Nanhi (now deceased) without paying any rent and their possession is open and hostile and to the knowledge of the defendants and others for the last more than 12 years and thus they have become owners of the same. But the said plea taken by the plaintiff is self-contradictory. On one side, the plaintiffs have claimed that Smt. Bhulla was having no right, title or interest on the suit land and on the other hand, they have claimed adverse possession against Bhulla and her successor in interest thereby admitting Smt. Bhulla and her predecessor-in-interest as true owners of the suit property.

In Bhim Singh and others Vs. Zile Singh and others, 2006 (3) C.C.C. 479 and Dewaki and others Vs. Dayawanti and others 2006 (3) 615 it has been held that plea of adverse possession can be taken as a defence/shield and cannot be used as a sword. Therefore, the aforesaid plea raised by the plaintiffs is not sustainable.

It is also settled law that no relief of injunction can be granted against true owner. Therefore, since the plaintiffs are not entitled to main relief of declaration, so they are also not entitled to consequential relief of injunction sought by them.”

A bare reading of the abovesaid findings would show that learned First Appellate Court proceeded on a factually correct and legally justified approach. In fact, a combined reading of both the impugned judgments passed by the learned Courts below would show that they have extensively dealt with

the oral as well as documentary evidence adduced by the parties, for deciding the issues on which the parties went to trial. It was rightly held that plea of adverse possession was not available to the plaintiffs-appellants.

Further, so far as the oral evidence led by the parties is concerned, the rule is – and it is nothing more than a practice - that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Judge on a question of fact.

It was so held by the Hon'ble Supreme Court as far back as in 1951 in the case of **Sarju Pershad Ramdeo Sahu Vs. Jwaleshwari Pratap Narain Singh and others**, AIR 1951 Supreme Court 120. In this regard, it is also pertinent to refer to the judgment of the Hon'ble Supreme Court in **Jeet Mohinder Singh Vs. Harminder Singh Jassi**, 1999 (9) SCC 386, wherein it was held that the appellate Court shall remember and keep in mind that the trial Judge would have the benefit of watching the demeanour of witnesses and forming first-hand opinion of them in the process of evaluation of evidence. It is also true that this opportunity is not available to the appellate Court, including this Court to watch the demeanour of witnesses, because they had already deposed before the learned trial Court.

Finally, while dealing with the scope of Sections 96 and 100 of the Code of Civil Procedure (for short 'CPC'), in the case of **Santosh Hazari Vs.**

Purushottam Tiwari (dead) by LRs, 2001 (3) SCC 179, the Hon'ble Supreme Court held as under: -

“.....We need only remind the first appellate Courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate Court continues, as before, to be a final Court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate Court is also a final Court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate Court even on questions of law unless such question of law be a substantial one.”

The abovesaid view taken by the Hon'ble Supreme Court in **Santosh Hazari's** case (supra) came to be reiterated by the Hon'ble Supreme Court in **Hemaji Waghaji Jat's** case (supra) as well as in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264**, holding that involvement of substantial question of law is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 CPC. So far as the present case is concerned, learned counsel for the appellants, despite making his best efforts, could not point out any question of law, much less substantial question of law, warranting interference at the hands of this Court in exercise of its appellate

jurisdiction, against the concurrent findings of facts recorded by both the learned Courts below.

During the course of hearing, learned counsel for the appellants failed to substantiate any of his abovesaid arguments. Although it is true that mutation does not confer title, yet it is also an undisputed fact in the present case that mutation in question Ex.P5 was entered and sanctioned in the presence of predecessors-in-interest of plaintiffs No.24 to 29 on 03.10.1973 and further their appeal against the order sanctioning the mutation was also dismissed vide order dated 23.07.1974 Ex.D2. Further, it was not a suit for possession on the basis of title, as sought to be argued by learned counsel for the appellants and this argument has been found factually incorrect and contrary to the record. The suit of the plaintiffs-appellants was for declaration and permanent injunction and for such a suit, the judgment in **Mohinder Singh's** case (supra) relied upon by learned counsel for the appellants, which was in a suit for possession, has not been found relevant to the facts of the present case.

In view of the peculiar facts and circumstances of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court in the cases referred to hereinabove, it is unhesitatingly held that the plaintiffs-appellants have miserably failed to prove their pleaded case, in their suit for declaration with consequential relief of permanent injunction. Having been filed on 28.10.2006, after a period of 32 long years from dismissal of their appeal Ex.D1, vide appellate order dated 23.07.1974 Ex.D2, whereby the mutation dated 03.10.1973 Ex.P5 attained finality against the plaintiffs-appellants, their suit for declaration was rightly held to be hopelessly time

barred.

Again, the plea of adverse possession presupposes the ownership of other side. In the present case, plea of adverse possession, though was not available to the appellants, being plaintiffs, yet it would go against the plaintiffs-appellants, because while taking the plea of adverse possession, they admitted the ownership of defendants-respondents. In the given fact situation of the present case, it can be safely concluded that learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned judgments and decrees passed by both the learned Courts below have been found based on cogent findings, the same deserve to be upheld. The Regular Second Appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant Regular Second Appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

24.01.2017

vishnu

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No