

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 228

SAO No.62 of 2013 (O & M)
Date of Decision: March 14, 2017

Rohtas

..... APPELLANT

VERSUS

Kaptan & others

..... RESPONDENTS

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

...

PRESENT: - Mr. Satbir Rathore, Advocate, for the appellant.

Mr. C.B. Goel, Advocate, for respondent Nos.1 to 5.

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Jaspal Singh, J

1. The instant appeal has been directed against judgment & decree dated September 25, 2013 passed by the Additional District Judge, Sonapat, whereby judgment September 17, 2011 passed by the executing court has been set aside and resultantly objections preferred by the appellant have been dismissed.

2. The facts giving rise to instant appeal are that Civil Suit No.633 of 1982 titled 'Mauji etc. vs. Mange Ram etc.' for partition of land measuring 101 Kanal 6 Marla comprised in Khewat No.369, Khata No.543, Rect. and Killa No.93/84-10m 94/2 (7-5), 86/0-10, 97/9-1, situated in the revenue estate of village Kumaspur, Tehsil & District Sonapat as per Jamabandi for the year 1976-77. Upon notice to the parties, defendant Nos.1 to 6 and 8 to 10 appeared and filed their written statement admitting the claim of plaintiff. Defendant No.7 did not appear and proceeded against exparte. On the basis of the admission of the defendants, learned trial court

3. It has further been averred that objections filed by various co-sharers were decided by the court but the objections filed by Sardar Singh and Ram Phal remained undecided and during the pendency proceedings, the parties arrived at a compromise and the objections were also decided on the basis of compromise dated May 18, 1998, on May 23, 1998. Resultantly, final decree dated April 29, 2000 was passed.

4. Hoshiar Singh, predecessor-in-interest of respondents also applied for separate decree under Order XX Rule 18 CPC. After obtaining the decree, he filed an execution application for implementation of decree dated April 29, 2000. During the pendency thereof, Hoshiar Singh was taken away by the nature and his LRs were brought on record. In the execution proceedings, warrants of possession were issued and Local Commissioner was appointed who submitted his report specifying therein that the land comprised in Plot No.96 measuring 103 sq. yards is in possession of the appellant. On the basis of this factual position, an application under Order XXI Rule 97 CPC was filed against the present appellant which was contested by him and filed objections alleging that the decree cannot be executed against him as he is not a party in the decree under execution. It was further pleaded that he has become owner in possession of the land in dispute by virtue of adverse possession. The aforesaid objections filed by the appellant were allowed by the executing court vide judgment dated September 17, 2011 holding that the decree is un-executable against the present appellant as he has become owner by virtue of adverse possession.

5. Being aggrieved by the aforesaid judgment/order dated September 17, 2011, the respondents filed an appeal before the District Judge, which was entrusted to the Additional District Judge, Sonapat for disposal. However, the said appeal preferred by the respondents has been

accepted by the Additional District Judge vide judgment dated September 25, 2013 which necessitated the filing of present appeal.

6. Assailing the impugned judgment, it has been argued with vehemence by learned counsel for the appellant that the same is absolutely against evidence available on file and settled canons of law. Misappreciation of evidence and legal proposition has resulted into miscarriage of justice. Infact, the lower appellate court has accepted the appeal filed by the respondents only on the ground that plea of adverse possession cannot be raised against a co-sharer. The said observations made by the lower appellate court are total in disregard to the various authoritative pronouncements made by the Hon'ble Apex Court on the issue in question. A co-sharer can claim adverse possession against other co-sharer if no action is taken by the co-sharer for more than 12 years. In the instant case, it is the categoric stand of the appellant before the executing court that he is in possession of the land in dispute since 1959. Previously, his father was in possession and after his demise, appellant came in its possession which has not been disputed or interrupted by the respondents at any point of time. Moreover, the possession of appellant over the disputed property has not been specifically denied by the respondents, rather, possession of the appellant has been admitted by the respondents in their reply. The partition proceedings by way of suit were initiated by the respondents in the Year 1980 i.e. after more than 21 years. Thus, it stands fully established that no proceedings whatsoever were ever initiated against the appellant or his father within 12 years as prescribed by law. Moreover, possession of father of appellant and after his demise that of the appellant is open, hostile and exclusive to the knowledge of Decree Holder and other co-sharers. As such,

court, that appellant has become owner of the suit land by way of adverse possession, is absolutely against the evidence and settled principles of law.

7. Learned counsel for the appellant has further contended that lower appellate court has placed reliance upon report of the Local Commissioner. Infact, the said report cannot be taken into consideration as firstly it was not a part of the report and secondly it cannot be accepted as a conclusive report for the reason that right to objection has not been provided to the appellant or his predecessor-in-interest. Moreover, if the report of Local Commissioner is taken into consideration, it also proves the possession of appellant over the disputed property. Lower appellate court has also taken erroneous view that all the right holders were impleaded through Deep Chand (defendant No.10) under Order I Rule 8 CPC. Infact, all the co-sharers have not been impleaded as party in the suit, therefore, the decree against appellant, as he is not a party, cannot be executed against him. Similarly, impleadment of right holders of Deep Chand (defendant No.10) is against the mandate of law. Thus, impugned judgment dated September 25, 2013 passed by the lower appellate court is not sustainable in the eyes of law being against legal proposition & facts. As such, the same is liable to be set aside by way of acceptance of instant appeal.

8. On the other hand, learned counsel for respondent Nos.1 to 5, while supporting the impugned judgment, has submitted that the same is absolutely in consonance with evidence available on file and settled canons of law, and deserves no interference by this Court. Adverting to the various contentions raised by learned counsel for the appellant, learned counsel for the respondents – Decree Holders has urged that Rajinder (respondent No.2 – Decree Holder) came to know about illegal possession of the objector on

property at the spot. Moreover, the houses have been constructed by objector – Rohtas only about three/four years back. A street was brick-paved/constructed by the Gram Panchayat at that time. Thus, he is not entitled to retain possession of the disputed property. As far as, proof of demarcation is concerned, respondents – DHs have examined PW-5 Siri Bhagwan, Halqa Kanungo, who conducted the demarcation and submitted report Ex.PW-5/A. Learned counsel for the respondents prayed for dismissal of the appeal.

9. After bestowing due consideration to the rival submissions made by learned counsel for the parties and appraisal of evidence as well as scrutinizing the impugned order, this Court does not find any legal and factual substance in the submissions made by learned counsel for the appellant.

10. It is amply proved on record that Balwant Singh, predecessor-in-interest of the objector was proprietor and a party to the suit for partition. He was duly served in representative capacity by Deep Chand, one of the defendants, under Order I Rule 10 CPC. As far as report of Local Commissioner is concerned, it is a part of file. It is only the report of Local Commissioner, on the basis of which, 44 proprietors were found entitled to allotment of land on partition. A glance at the aforesaid report clearly reveals that Decree Holders – Hoshiar Singh and others were found entitled to 408 square yards and they were accordingly allotted plot Nos.96 and 107 measuring 410 square yards. Similarly, at Serial No.50 of the report, Balwant Singh son of Hari Singh who is non-else but predecessor of the objector was allotted plot No.168 measuring 187 square yards. Once the predecessor of objector/appellant has also been allotted plot No.168 on the

appellant with regard to report of Local Commissioner Pales into insignificance. The report of Local Commissioner is the basis of final decree dated April 29, 2000, the copy of which is Ex.RW-6/A.

11. As far as contention of learned counsel for the appellant that appellant has become owner of the suit property by way of adverse possession is concerned, there is no cogent and convincing evidence available on file. Otherwise also, it is well settled proposition of law that possession of co-sharer in the joint holding is the possession of all. The possession of a co-sharer is stated to be joint and on behalf of other co-sharers. No doubt in some cases, a co-sharer may succeed in showing his possession to be exclusive and hostile to possession of other co-sharers but the objector has not claimed himself to be a co-sharer and suppressed his status in that capacity. There is nothing on record to prove that other co-sharers were ousted from the possession at any time. Even otherwise, there is no specific pleading as to when and how, appellant came in unauthorised occupation or when his adverse possession started over the disputed property as has been claimed by him. Though, in the instant case, appellant has claimed his possession since 1959 but to the utter surprise, he has failed to prove it.

12. It would be pertinent to mention here that prior to passing of preliminary decree dated November 07, 1981 or final decree dated April 29, 2000 or even subsequent thereto till the year 2010, the appellant or his father did not claim their possession. Moreover, Balwant Singh and his successors who are beneficiaries under the final decree have already taken possession of plot No.168 measuring 187 square yards, as has also been referred to above.

Now, it does not lie in their mouth to say that final decree is wrong or that

spot. Moreover, mere assertion of the appellant that when his father purchased the adjoining property in the year 1959 vide sale deed Ex.O1, he had encroached upon the adjoining land. Thus, he can only be said to be an unauthorised occupant and such a person otherwise is not entitled to any relief, that too, against an owner. Moreover, he has failed to raise any objection since 1981 to 2010 during the period the litigation pending. Had he been in possession of the disputed property, either during pendency of suit or at the time of passing of final decree, the appellant – objector must have raised such objection but he did not point out his unauthorised or adverse possession over the disputed property at any stage. Thus, this Court is of the considered view that lower appellate court has rightly concluded that appellant was not in possession of the suit property prior to the year 2010. He cannot be said to have become owner of the disputed property by way of adverse possession. The findings recorded by the lower appellate court are absolutely in consonance with the evidence available on file and legal proposition, and as such, impugned judgment & decree dated September 25, 2013, whereby judgment September 17, 2011 passed by the executing court dismissing the objections preferred by the appellant was set aside, does not call for any interference by this Court and is upheld.

13. As an upshot of aforesaid discussion, the instant appeal being devoid of merits is dismissed.

14. No order as to costs.

March 14, 2017

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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No