

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

RSA No.3339 of 2015 (O&M).
Decided on:-February 06, 2017.

Amrik Singh and others

.....Appellants.

Versus

Ajit Singh and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. A.S. Khosa, Advocate for
Mr. G.S. Kaura, Advocate
for the appellants.

HARI PAL VERMA, J.

Appellants-defendants have filed the present regular second appeal against the judgment and decree dated 28.04.2015 passed by learned District Judge, Jalandhar whereby their appeal against the judgment and decree dated 08.12.2014 passed by learned Additional Civil Judge (Senior Division), Nakodar, was dismissed.

Briefly stated, the respondent No.1-plaintiff, namely, Ajit Singh had filed a suit for possession of land measuring 12 Kanals situated within the area of village Ummarwal Billa, Tehsil Nakodar, District Jalandhar, fully mentioned in the head note of the plaint on the basis of ownership. He has claimed that the suit land is owned by him as he had purchased the same by virtue of registered sale deed dated 04.12.2008 along

with some other land. The mutation No.7469 was duly sanctioned in his favour. The defendants are in illegal possession of the suit land and have no right to retain the same. The plaintiff has claimed that he is entitled to possession of the suit land being owner thereof. He had asked the defendants many times to admit his claim and to handover the peaceful and vacant possession of the suit land, but the defendants always put him off on one pretext or the other. Rather, the defendants No.1 to 3 and one Satpal son of Charan Singh had filed a suit for permanent injunction before the Civil Court, Nakodar. Hence, the suit.

On notice, defendants No.1 to 3, 6 and 8 (appellants No.1 to 3, 6 and 7 herein) appeared and filed their joint written statement taking preliminary objections regarding maintainability of the suit; the suit being bad for mis-joinder and non-joinder of necessary parties; locus standi, suit being barred under Section 11 CPC; concealment of material facts; suit being not properly valued for the purposes of Court fee and jurisdiction; estoppel; cause of action; jurisdiction of the Court and limitation.

On merits, it was pleaded that Mohinder Singh father of defendants No.1 to 4 and the appellant-defendant No.3 Joginder Singh had purchased the possessory rights from Amrik Singh and Baldev Singh both sons of Harbans Singh, residents of village Killa Kakra. Since the purchase of the suit land, the defendants are in cultivating possession of the same as owners. Previously, Mohinder Singh and appellant-defendant No.3 Joginder Singh were in cultivating possession of the suit land. But after the death of Mohinder Singh, his sons and Joginder Singh along with his sons are in

cultivating possession of the suit land.

It was further pleaded that the suit land was Banjar Qadim and was not fit for cultivation. The defendants had spent a huge amount from their own pockets and made it fit for cultivation by removing the bushes and Jungli Bootis. The defendants are owners of the suit land on the basis of adverse possession. The possession of defendants over the suit land was continuous, open, hostile and to the knowledge of the defendants and general public. Moreover, when the respondent-plaintiff had purchased the suit land, he was well aware of these facts. In the revenue record, previously the suit land existed in the name of Sham Singh son of Amar Chand, but the plaintiff being the man of muscle power came to the shadow of Sham Singh. Said Sham Singh had also tried to snatch the possession from the defendants, but he could not succeed. Thereafter, the similar story was repeated by the respondent-plaintiff on many occasions. The defendants never paid any rent or Theka or Batai to anybody. So, the defendants had become the owners of suit land on the basis of adverse possession. Remaining averments of the plaintiff were denied and dismissal of the suit was prayed.

Replication to the aforesaid written statement was filed by the respondent-plaintiff, wherein he had denied the averments of the defendants and reiterated the stand taken by him in his plaint. On the basis of pleadings of the parties, following issues were framed by learned trial Court:

1. Whether the plaintiff is owner of disputed property? OPP
2. Whether defendants are in illegal possession of disputed property? OPP
3. Whether defendants have refused to vacate the disputed

property despite various requests by plaintiff? OPP

4. Whether present suit is maintainable? OPP
5. Whether suit is bad for mis-joinder and non-joinder of necessary party? OPD
6. Whether the suit is barred as per provisions of Section 11 of the Code of Civil Procedure? OPD
7. Whether plaintiff has concealed true and material facts from the court, if so, its effect? OPD
8. Whether civil court has jurisdiction to try and decide the present suit? OPD
9. Whether present suit is within jurisdiction? OPD
10. Whether plaintiff is estopped by his own act and conduct to file the present suit? OPD
- 10A. Whether the defendants have become owners of suit property by way of adverse possession? OPD
11. Relief.

Vide judgment and decree dated 08.12.2014, learned trial Court had decreed the suit of the plaintiffs. The trial Court held that the defendants are in unauthorized and illegal possession of the suit property and thus, they are required by law to hand over the possession of suit property to its real owner i.e. the plaintiff. The defendants have failed in proving the fact that they have become owners of the suit property by way of adverse possession or that this suit is barred under Section 11 CPC. The trial Court has further held that the present suit is maintainable in the present form and the court is also having jurisdiction to try and decide the present suit in view of the nature of the suit. Since, the present suit has been filed seeking possession on the basis of ownership, so there is no limitation prescribed for the said

suit and the suit is within limitation. The present suit is also not bad for non-joinder of any necessary party nor the plaintiff is estopped in any manner from filing this suit nor he has suppressed any material facts from the Court. Accordingly, all the issues No.1 to 10 and 10A were decided in favour of the plaintiff and against the defendants.

Aggrieved against the aforesaid judgment and decree passed by the trial Court, the appellants-defendants had filed an appeal before the lower appellate Court. The lower appellate Court had framed the following questions for the determination of dispute between the parties:

- a) Whether the land was Banjar Qadim in the year 1981?
- b) Whether Joginder Singh and Mohinder Singh had made the land cultivable?
- c) Whether Joginder Singh and Mohinder Singh have purchased possessory rights from Amrik Singh, Baldev Singh sons of Harbans Singh?
- d) Whether the appellants have become the owners of the suit land by way of adverse possession?

Learned lower appellate Court had decided all these questions against the appellants-defendants and held as under:

“32. *This court has independently assessed the evidence on record and is of the considered opinion that the defendants have failed to establish their adverse possession; rather the ownership of plaintiff is well established and in fact the same is also admitted by the defendants. Our own Hon’ble High Court in case **Jagat Singh and others Versus Sri Kishan Dass and others 2008(1) CCC 444** has held that once the defendant raises a plea of adverse possession, plaintiff is presumed to be owner of the suit land. Thus, the findings of the learned trial court on all the issues are based on proper appreciation of*

evidence and the same are hereby affirmed.”

Accordingly, the appeal filed by the appellants-defendants was also dismissed by learned District Judge, Jalandhar vide judgment and decree dated 28.04.2015.

It is in the aforesaid circumstances, the appellants-defendants have filed the present regular second appeal. The defendant No.7 Dilbagh Singh as well as defendants No.4 (ii) and (iv), namely, Baljit Singh and Mandeep Kaur have not preferred the present appeal and they have been impleaded by the appellants as proforma respondents No.2 to 4.

The appellants-defendants have formulated the following substantial questions of law:

- i. Whether the defendant is entitled to take inconsistent pleas to defeat the right of the plaintiff?
- ii. Whether the inconsistent pleas taken by the defendant amounts to abandoning the other plea available to him?
- iii. Whether the impugned judgments and decrees are liable to be set aside being illegal, arbitrary, erroneous, perverse, based on conjecture and surmises and wrong appreciation of the pleadings and evidence available on the record and the law involved in the matter in controversy?
- iv. Whether grave and manifest injustice has been caused to appellants in the given facts and circumstances of the case?

Learned counsel for the appellants-defendants has argued that the Courts below have not appreciated the settled proposition of law and the overwhelming evidence available on record which establishes the possession of appellants over the property in dispute. Even the revenue record establishes that the appellants are in lawful and hostile possession to the knowledge of the original owner. It is the settled proposition of law that the

plaintiff is required to stand on his own legs and is required to prove his case in all probabilities. But in the case in hand, the respondent-plaintiff has failed to establish his case and, therefore, the suit was liable to be dismissed. But by not doing so, the Courts below have committed a legal error.

I have heard learned counsel for the appellants and perused the paper book.

The respondent No.1-plaintiff has filed the suit with an averment that the land measuring 12 Kanals is owned by the plaintiff as he had purchased the same vide sale deed dated 04.12.2008 along with other land. Accordingly, mutation No.7469 had been duly sanctioned in favour of the plaintiff. But the defendants are in illegal possession of the property and have no right to retain the same.

It is not the case of the appellants-defendants that they have disputed the ownership of the respondent-plaintiff over the suit property which is otherwise established on the basis of record of Jamabandi Ex.P1 and sale deed Ex.P2. As per the Jamabandi Ex.P1, the suit property was earlier owned by Sham Singh and after his death, the mutation of inheritance was sanctioned in favour of Wazir Chand. The sale deed Ex.P2 has been proved on record through the evidence of its scribe, namely, PW2 Kishan Kant. Thereafter, the suit property had been purchased by Harjit Singh from Wazir Chand which was registered vide sale deed Ex.P2. Even defendant No.2 Kulbir Singh (DW1) in his cross-examination has admitted that earlier the suit property was owned by Sham Singh and after his death, Wazir Chand became owner of the same. The respondent-plaintiff Ajit Singh had

purchased the suit property from Wazir Chand. Thus, ownership of the respondent-plaintiff on the suit property is established and proved on record. The appellants have pleaded that they are in adverse possession of the suit property which pre-supposes the admission of title of the respondent-plaintiff as owner. But interestingly, the appellants-defendants are denying the very ownership of the respondent-plaintiff on the suit property which is the basic ingredient of plea of adverse possession. DW2 Gurdeep Singh who was examined as defendant witness himself admitted in his cross-examination that the defendants were cultivating the suit land as tenants on the payment of half share of produce under Sham Singh. Moreover, from Jamabandi Ex.P1 and Ex.P4 as well as Jamabandi produced by appellant-defendants, Ex.D1 to Exc.D6 to which even a presumption of truth is attached, it is clear that the appellants-defendants are shown as tenants (Gair Marusi) over the suit property on the basis of Batai to the owner. The appellants have failed to rebut this position as depicted in the Jamabandis. Thus, it can safely be concluded that possession of the appellants-defendants over the suit property was permissive in nature and there is no evidence on record to prove as to how and when its nature changed from being permissible to hostile or adverse. The tenant always remains a tenant until there is strong evidence of change of character or severance of relationship of landlord and tenant. The appellants-defendants have failed to prove that they have purchased any possessory rights from any person as alleged by them nor it is proved that such purported sellers, namely, Amrik Singh and Baldev Singh were having any right whatsoever to sell the said possessory

rights in favour of defendants or their predecessors. Thus, the Courts below have rightly held that the appellants are in unauthorized and illegal possession of the suit property and, therefore, they are required to hand over possession of the suit property to its real owner i.e. the plaintiff. The appellants-defendants have also failed to prove the fact that they have become owner of the suit property by way of adverse possession or the suit is barred by principle of resjudicata as enshrined under Section 11 CPC.

The Courts below have independently assessed the evidence on record and have found that the appellants have failed to prove and establish their adverse possession. Rather, the ownership of the respondent-plaintiff is well-established. The record reveals that the appellants are tenants (Gair Marusis). The appellants have pleaded adverse possession and set up a title hostile to that of the landlord, but they are not able to establish their ownership. The Jamabandi entries for the year 1981 always reflect that the appellants are in possession of the suit land as Gair Marusis (tenants at will) on payment of ½ share of crop (Batai). But this fact has been denied by the appellants themselves who always took the plea that they are not tenants, rather, they are owners in possession by way of adverse possession. The revenue record i.e. Jamabandi nowhere refers that their possession is adverse.

Both the Courts below have returned a finding of fact that the appellants-defendants were tenants at will (Gair Marusis) and there is no illegality in the said finding. When there is a concurrent finding of fact recorded by both the Courts below, no interference is warranted.

Therefore, no substantial question of law is involved in the present regular second appeal. Accordingly, the impugned judgments and decrees passed by the Courts below are affirmed and the present regular second appeal is dismissed.

February 06, 2017

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No