

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

**RSA No.1288 of 2014 (O&M)
Date of Decision: March 18, 2017**

Zile Singh & Ors.

..Appellant(s)

Versus

Rajinder Singh

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. J.S. Mehndiratta, Advocate
for the appellants.

Mr. Babbar Bhan, Advocate
for the respondent.

ANITA CHAUDHRY, J.

This is the defendants' second appeal aggrieved by the judgment and decree passed by both the Courts below.

The plaintiff – Rajinder Singh had purchased land from the co-sharers. The details are given in para no.1 of the plaint. The land was purchased by two sale deeds both dated 15.04.2004. The case of the plaintiff was that the defendants were strangers and had no right or title in khasra no.410, situated at Dadri, District Bhiwani. Disclosing some additional facts it was pleaded that Subhash Chander the vendor of the plaintiff had earlier filed a suit in 1997 against these defendants for permanent injunction and after the sale he did not take any interest and did not pursue the suit and the plaintiff after purchase got himself substituted in place of Subhash and the suit was partly decreed and no

injunction was granted with respect to a part of the property as the Local Commissioner had found the defendants' possession over some portion and while deciding issue no.5, a finding was given that the plaintiff will have to file a suit for possession. It was pleaded that in the previous suit the defendants had taken the plea that they had perfected their title and were in possession for over 12 years but that plea was rejected. The case of the plaintiff is that the possession of the defendants was unauthorized and illegal and they were not entitled to the possession.

The defendants took the plea that the sale deed dated 15.04.2004 was obtained by fraud and no earnest money had been paid and the suit was not maintainable. It was pleaded that neither Subhash nor plaintiff had any concern with 971 square yards (1 Kanal 13 Marlas) comprised in Khasra no.410 Min Khewat No.1299, Khatoni No.1397, situated in the revenue estate of township of Dadri and both the sale deeds were bogus, without consideration and they had become owners by way of adverse possession and they had also taken the water and electricity connection and had raised construction.

On the pleading of the parties following issues were framed:-

1. Whether the plaintiff is entitled to decree for possession as per the portions detailed in the head note of the plaint? OPP
2. Whether the sale deeds no.257 and 244 dated 15.04.2004 are bogus, fraudulent and liable to be set aside? OPD

3. Whether the plaintiff is guilty of suppression of true and material facts from the court?
4. Whether the defendants have become owners in possession by way of adverse possession of the disputed land? OPD
5. Relief.

The trial Court held that the defendants had taken the plea of adverse possession and thereby, they admitted the title of the plaintiff. A finding had been recorded against them as they were unable to show their adverse title. Para nos.16 & 17 of the judgment of the trial Court reads as under:-

“16. Further the defendants though have claimed the ownership of the said land but they have failed to prove the ownership by way of any documentary proof even they have also failed to prove their adverse possession over the suit property since a long time. The defendants here cannot take the plea that their possession over suit property is more than 12 years for the reason that earlier the plaintiff and his vendor were fighting their case against these defendants amongst the others for the relief of permanent injunction. This fact also reflects that the possession of the defendants is not adverse over the suit property and thus the same is unauthorized one.

17. Thus in the given circumstances of the case and after going through the evidence came on the case file on part of the defendants, the defendants could not prove their adverse possession over the suit property against the plaintiffs. Further it has been proved by the plaintiff with the help of documentary as well as oral evidence that he is owner of the

suit property by way of two sale deeds bearing no.244 and 257 both of dated 15.04.2004 which are valid one. The plaintiff thus has been able to prove issue no.1 in his favour. Accordingly, issue no.1 is decided in favour of the plaintiff whereas issue no.2 and 4 are decided against the defendants.”

Aggrieved by the judgment, the defendants filed an appeal which too came to be dismissed. It noted that the judgment rendered in the earlier litigation pertaining to the suit property was not challenged by the defendants and had attained finality. Para nos.14 & 15 of the judgment rendered by the first Appellate Court reads as under:-

“14. As per perusal of record, at earlier occasion, a civil suit for injunction bearing No.88 of 1997 titled Subhash Chander Versus Zile Singh and others was filed against the present defendants and three others. During the pendency of that civil suit, the present respondent-plaintiff had purchased share of disputed Khasra No.410 min vide sale deed Ex.D5 and Ex.D6 from the original plaintiff of that suit namely Subhash Chander and the present respondent-plaintiff was substituted as plaintiff in place of Subhash Chander of that suit. That civil suit in No.88 of 1997 was decided on 24.10.2005 as per certified copy of judgement Ex.P1 and decree sheet Ex.P2. In that civil suit no.88 of 1997, the present defendants had taken the plea of adverse possession that they have become owners of the suit property by way of adverse possession and a specific issue to this effect was also framed being issue No.2 and that issue was decided against the present appellants-defendants whereas the present respondent-plaintiff was held owner in possession over the suit property except the area found in possession of the present defendants and that suit for permanent junction of present respondent-plaintiff was partly decreed. It was

also held in that judgment Ex.P1 that defendants No. 1 to 3 (present appellants) were found in possession over the part of disputed khasra number and for that area in possession of defendants, the plaintiff was required to file a suit for possession to retrieve possession of that portion of the suit property. In view of this judgement Ex.P1 and decree sheet Ex.P2, the present suit for possession was filed by the plaintiff against all the three defendants. It is to worthwhile mention here that judgement Ex.P1 of Civil Suit No.88 of 1997 has not been challenged by either of the party and the same has got finality between the parties.

15. After purchasing the share of the suit property bearing khasra No.410 min, measuring 37 kanals 16 marlas vide sale deeds Ex.D5 and D6, the present plaintiff has become owner as there are other co-owners in the suit land besides vendors of the present plaintiff has become co-owner as there are other co-owners in the suit land besides vendors of the present plaintiff as reflected in jamabandi Ex,P5. As submitted by Iearned counsel for the appellants-defendants that the share of vendors of the present plaintiff was less as shown in sale deeds Ex.D5 and D6, even this contention does not debar the present respondent-plaintiff to file a suit for possession being co-owner in the joint land. Hence, the suit for possession filed by the respondent-plaintiff is maintainable."

The counsel for the appellants with great eloquence has urged that the vendor of the plaintiff was owner only to the extent of 27 Kanal 19 Marlas whereas he had sold 29 Kanals 15 Marlas of land and he could not have sold an area which was more than what was owned by them and the difference in the area is about 1071 square yards. It was urged that the plaintiff had not purchased this area and suit had been filed only by one co-sharer and all co-sharers were not party and they were asserting their adverse possession from times memorial and

had enclosed the land with a boundary wall. It was urged that finding recorded in the earlier suit would not come in the way as that was a suit for injunction and the title was not in issue and the period of 12 years has been completed during the pendency of the trial.

The submission on the other hand was that one co-sharer can file a suit against the person who is an unauthorized possession and all the co-sharers do not have to join. It was urged that no plea had been taken by the defendants that the vendor did not have title to the area sold and it would be a dispute between the co-owners. It was urged that in the earlier suit the plea of adverse possession had been raised and a specific issue was framed and a finding had been recorded against the defendants which they did not challenge and had become final. It was urged that the defendants have failed to plead as to when their possession was hostile and to the notice and knowledge of the owners and the Local Commissioner had submitted his report and it was reported that the construction was new and there was only a Chappar and the construction had hurriedly been raised when the first suit had been filed. It was urged that the visit by the Local Commissioner was on 5th September, 1997 and the possession of the defendants is not recorded in the Jamabandi and he did not complete the period of 12 years and could not even raise the plea again.

The defendants had challenged the sale deeds in favour of the plaintiffs on the plea that it had been obtained by fraud but failed to lead any evidence. The Jamabandi does not record the possession of the

defendants. It was claimed that they had taken water and electricity connection. In the first suit a Local Commissioner had been appointed who had reported that the new bricks had been used in the construction and only the Chhapar was old. The construction had been raised after the suit was filed in 1997. The defendants failed to state as to when they came in possession of the property and when their hostile possession started. There was no evidence to show that they had perfected their title.

The defendants did not raise any plea that a larger area was sold by the vendor to which he had no title. That would be a question between the co-sharers and was adequately dealt with by the first Appellate Court. A co-sharer independently could file a suit against a person who was in unauthorized possession. There was no need for all the co-sharers to join in the suit. The defendants have failed to prove their adverse possession. They had not perfected their title and were in unauthorized possession. Therefore, the plaintiff being a co-sharer was entitled to the possession.

I find no infirmity in the findings recorded by the Courts below. There is no merit in the appeal. The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

March 18, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No