

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**RSA No.2116 of 2014
Date of decision:23.2.2017**

Gurdev Singh

...Appellant

Versus

Gurtej Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Sanjiv Gupta, Advocate for the appellant.
Mr.Aman Sharma, Advocate for respondents No.1 to 3.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful plaintiff is in regular second appeal, in a suit for declaration filed on the basis of adverse possession, which came to be dismissed by both the learned courts below, recording concurrent findings of facts.

Brief facts of the case, as noticed by the learned trial Court in para 1 of its impugned judgment, are that the present suit was filed by plaintiff-Mahender Singh (now deceased), while stating that he was permanent resident of village Manganpur, Tehsil and District Sirsa. In the plaint, it was mentioned that previously Puran Singh, son of Rajinder Singh, son of Ganesha, resident of village Kanganpur, was the owner of the suit land measuring 37 kanal 10 marla as detailed and defined in the head note of the plaint and plaintiff was cultivating the same on 1/3rd batai but now Puran Singh has been died and after the death of Puran Singh, one Jagjit Singh prepared forged power of attorney purported to be executed by Puran Singh and on the basis of that forged power of attorney, Jagjit Singh sold the suit land to the defendants through two sale deeds dated 17.9.2003 and

12.5.2003. The case of the plaintiff was that after the death of Puran Singh, plaintiff side was cultivating the suit land for more than 12 years without paying any batai to the defendants and previous owner Puran Singh, so the possession of the suit land was hostile, notorious and more than 12 years, so the plaintiff were now claiming their title on the suit land on the basis of adverse possession. According to the plaintiffs entry in column No.9 of the jamabandi showing that plaintiff Mahinder Singh was cultivated the suit land on 1/3rd, batai was wrong, illegal and liable to be corrected in favour of the plaintiff Billa lagan Bila Batai because the plaintiff never paid any batai to the defendants. It was further stated that on the basis of wrong revenue entries defendants filed a suit against him on form 'L' in the court of A.C.1st Grade, Sirsa and court of A.C. 1st Grade, Sirsa ordered the plaintiff to pay the rent of Rs.64,002/- on 11.5.2007 against which appeal has been filed. On the basis of these broad contentions, prayer has been made for declaration to the effect that plaintiffs (now LRs of plaintiff Mahinder Singh) was/were owner in possession of the suit land by way of adverse possession and they also sought the relief for restraining the defendants from dispossessing the plaintiffs side from the suit land in any manner.

Having been put to notice, defendants appeared and filed their contesting written statement, raising more than one preliminary objections. Plaintiff filed his replication. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiff is entitled for the relief of declaration, as prayed for?OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD
3. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD

4. Whether the plaintiff has concealed the true and material facts from the court? OPD

5. Whether the plaintiff is estopped by his own and conduct to file the present suit? OPD

6. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence, before the learned trial Court. After hearing the learned counsel for the parties and going through the relevant record, the learned trial Court came to the conclusion that the plaintiff has failed to prove his case, which was based on plea of adverse possession. Accordingly, suit was dismissed vide impugned judgment and decree dated 1.3.2013.

Feeling aggrieved, legal representatives of plaintiff-Mahinder Singh filed their first appeal, which also came to be dismissed by the learned first appellate court vide impugned judgment and decree dated 7.10.2013. Hence this regular second appeal, at the hands of one legal representative of Late Sh. Mahinder Singh-original plaintiff, while impleading his other legal heirs as per proforma respondents No. 4 to 11.

Heard learned counsel for the parties.

It is a matter of record and not in dispute that the suit for declaration filed by the plaintiff was based on the plea of adverse possession. Plea of adverse possession can only be raised by way of defence. A person in adverse possession of property cannot seek a declaration to the effect that such adverse possession has matured into ownership. The plea of adverse possession is available only as a shield. When confronted with this crucial aspect of the matter, obtaining on record in the present case, learned counsel for the appellant-plaintiff had no answer

and rightly so, it being an established principle of law.

The above-said view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court as well as this Court in **Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan & others, 2009 (16) SCC 517, Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and another, 2014 (1) SCC 669, Bhim Singh and others Vs. Zile Singh and others, 2006(3) RCR (Civil) 97 and Joginder Kaur Vs. Gurbachan Kaur and others, 2013 (6) RCR (Civil) 685.**

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below would make it crystal clear that the concurrent findings of facts recorded by the learned courts below are based on true facts of case and they are also in consonance with the law settled by the Hon'ble Supreme Court as well as this Court, because of which no fault can be found with the concurrent findings recorded by the learned courts below. In fact, suit of the plaintiff, in the present from, was not even maintainable and it was rightly dismissed by both the learned courts below.

Learned counsel for the appellant could not substantiate any of his arguments, despite making his best efforts because there was no cogent and convincing evidence available on record, which could have been relied upon by the learned counsel for the appellant, in support of his contentions. Having said that, this Court feels no hesitation to conclude that both the 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 also.

The learned first appellate court, while reconsidering the entire

case on facts as well as in law, recorded its cogent findings, before arriving at a just conclusion. The relevant findings recorded by the learned first appellate court, in paras 16 and 17 of its impugned judgment, which deserve to be noticed here, read as under:-

“Heard. This court has gone through the pleadings of the parties, corresponding oral and documentary evidence produced by them and findings of Ld. Lower court and it has been found by this Court that finding on all the issues i.e. issue no.1,2,3, 4 & 5 of Ld.lower Court made in the impugned judgment/decreed dated 5.3.2013 are correct factually as well as legally because firstly deceased plaintiff Mahender Singh in written statement dt.5.3.2007 Ex.D-1 filed in eviction proceedings before Ld. AC Ist Grade, Sirsa in clear terms made admission of the fact of payment of batai regularly on each harvest. Of course deceased Mahender Singh and now his LR's who are appellants are bound by such admissions. They (appellants) are certainly estopped from wriggling out from such admissions.

Secondly legally also suit was not maintainable because it is a settled law that a person in adverse possession can only raise such plea by way of defence and not by way of offence by filing a suit for declaration, as held in the rulings supra of Hon'ble Punjab & Haryana High Court referred in Para No.12 of this Judgemnt. Further Hon'ble Punjab & Haryana High Court in another ruling titled Bhim Singh & ors. Vs. Zile Singh & ors. 2006 (3) RCR (Civil) 97 while interpreting Article 64 & 65 of Limitation Act, 1963 ruled that a person in adverse possession of immovable property cannot file suit for declaration claiming ownership.”

During the course of hearing, learned counsel for the appellant could not point out any jurisdictional error or patent illegality in either of the impugned judgments and decrees passed by the learned courts below.

He also could not point out any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the instant appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 2009 (2) RCR (Civil) 286.***

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 the present appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

Resultantly, with the above-said observations made, the instant regular second appeal stands dismissed, however, with no order as to costs.

23.2.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No