

RSA No. 650 of 2015 (O&M)

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

**RSA No. 650 of 2015 (O&M)
Date of Decision: 25.7.2017**

Karnail Singh and another

.....Appellants

Vs.

Varinder Kaur and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. H.S. Brar, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Plaintiffs are in regular second appeal, against the concurrent findings of facts recorded by both the learned courts below, whereby their suit for declaration, based on the plea of adverse possession, was dismissed by the learned trial court vide its impugned judgment and decree dated 25.9.2012 and their first appeal was also dismissed by the learned first appellate court vide its impugned judgment and decree dated 2.7.2014.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of its impugned judgment, are that defendants/respondent No.1 to 3, through their general power of attorney Harinder Pal Singh son of Harbans Singh, along with Bhag Singh, entered into an agreement to sell

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dated 28.12.1987 in favour of the plaintiffs for the sale of land measuring 92 kanals 18 marlas and delivered possession of the same to the plaintiffs at the time of execution of the agreement to sell. The plaintiffs further pleaded that as per the terms and conditions of the said agreement to sell, the sale deed was to be executed in favour of the plaintiffs on 2.3.1988 on payment of balance sale consideration, but defendants Nos. 1 to 3, Harinder Pal Singh and Bhag Singh failed to execute the sale deed in favour of the plaintiffs and ultimately, plaintiffs had filed a suit against them for specific performance of the agreement to sell in dispute. During pendency of the said suit, Bhag Singh had expired. The said suit was partly decreed by the then learned Addl. Senior Sub Judge, Ferozepur, vide judgment and decree dated 22.11.1993 qua 1/4th share of Harinderpal Singh, whereas, suit against defendants No. 1 to 3 was dismissed. The appeal filed by the plaintiffs against Harinder Pal Singh was dismissed and execution filed by the plaintiffs against Harinder Pal Singh was pending.

Plaintiffs further pleaded that though suit for specific performance was dismissed, but possession of the plaintiffs over the suit land was continuous, open, uninterrupted and well within the knowledge of the defendants since the date of execution of the agreement to sell dated 28.12.1987 and the defendants never claimed possession of the suit land nor they ever claimed any share of produce, therefore, possession of the plaintiffs over the suit land became adverse to that of the defendants and they became owners to the extent of $\frac{3}{4}$ share out of the land measuring 92 kanals 18 marlas by way of adverse possession. The plaintiffs further pleaded that one Ajai Singh son of Kunda Singh prepared two sale deeds dated 17.9.1993 and 20.9.1993 qua the land measuring 58 kanals 7 marlas

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out of the suit land alleged to have been executed by defendants No.2 and 3 in his favour. Defendants No.2 and 3 filed a suit for declaration against said Ajaib Singh challenging the alleged sale deeds and the said suit was decreed by Sh. Dalip Singh, the learned Civil Judge (Senior Division), Ferozepur, vide judgment and decree dated 29.10.1996 whereby the alleged sale deeds were set aside. However, said Ajaib Singh got the mutation sanctioned in his favour on the basis of alleged sale deeds, but since the said alleged sale deeds were set aside by the learned civil court and as such, the said land again became the ownership of defendants No.2 and 3.

The plaintiffs further pleaded that even in the said previous suit, defendant No.2 and 3 admitted the possession of the plaintiffs over the suit land. Even on 23.3.1994 during the spot inspection by the Halqa Patwari, the plaintiffs were found to be in possession of the suit land at the spot, but the Patwari showed his inability to record khasra girdawari of the suit land in the names of the plaintiffs on the ground that the plaintiffs were not produced any receipt regarding payment of share of produce and rapat No. 264 dated 23.3.1994 was also entered to this effect. The plaintiffs were further pleaded that defendant No.1 was transferred some portion of the suit land in favour of defendant No.4 and mutation in this regard was also sanctioned, but the said sale did not effect the rights of the plaintiffs, as defendant No.4 has stepped into the same shoes like defendant No.1. Moreover, defendant No.4 was daughter-in-law of defendant No.1 and the alleged sale was without any consideration and defendant No.4 never came in possession of the said land nor she ever claimed possession of suit land. The plaintiffs claimed that their possession over the land was peaceful, continuous, uninterrupted, open and well within the knowledge of the

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defendants for the last more than 12 years. Plaintiffs were alleging that now the defendants started making efforts to alienate the suit land to some one else and starting making efforts to cause interference with the possession of the plaintiffs over the suit land.

Defendants were put to notice. However, defendants No.1 to 3 did not appear and they were proceeded against ex parte. Suit against defendant No.4 was dismissed as withdrawn.

With a view to substantiate their stand taken in their pleadings, plaintiffs brought on record their ex parte evidence. After hearing learned counsel for the plaintiffs and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiffs have failed to prove their case. Accordingly, their suit for declaration was dismissed by the learned trial court vide its impugned judgment and decree dated 25.9.2012. Feeling aggrieved, plaintiffs filed their first appeal, which also came to be dismissed by the learned Additional District Judge, vide its impugned judgment and decree dated 2.7.2014. Hence this regular second appeal at the hands of unsuccessful plaintiffs.

Heard learned counsel for the appellants.

It is a matter of record that there was an agreement to sell dated 28.12.1987. On the basis of the said agreement to sell, plaintiffs filed their earlier suit for possession by way of specific performance of the agreement to sell. Said suit of the plaintiffs-appellants was partly decreed. It is also not in dispute that suit of the plaintiffs for possession by way of specific performance was dismissed qua present defendants No. 1 to 3. Plaintiffs-appellants were claiming themselves to be owners in possession over the suit property on the strength of the abovesaid agreement to sell dated

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28.12.1987. Accordingly, plaintiffs-appellants took the plea of adverse possession against defendants No.1 to 3. Having said that, this Court feels no hesitation to conclude that the plaintiffs failed to prove their case and they were rightly non suited by both the learned courts below, because of which the impugned judgments and decrees deserve to be upheld.

It is the settled proposition of law that plea of adverse possession pre-supposes the ownership of other side. It also goes without saying that plea of adverse possession is not available to plaintiffs but only to the defendant as defence. In such a situation, suit of the plaintiffs-appellants for declaration was not maintainable. Since the learned courts below have recorded their concurrent findings of facts on the basis of abovesaid factual as well as legal aspects of the matter, no fault can be found with the impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments of Hon'ble the Supreme Court as well as this Court:-

Jeet Mohinder Singh Vs. Harminder Singh Jassi, 1999 (9) SCC 386 (SC)

Hemaji Waghaji Jat VS. Bhikhabhai Khengarbhai Harijan and others, 2009 (16) SCC 517 (SC)

Gurudwara Sahib VS. Gram Panchayat Village Sirthala and another, 2014 (1) SCC 669 (SC)

Bhim Singh and others Vs. Zile Singh and others, 2006 (3) RCR (civil) 97 (P&H)

Jeet Singh deceased represented by his LRs Varkha Kaur and others Vs. Ranjeet Singh and others, 2016 (3) PLR 597 (P&H)

Gopi Ram and others VS. Sajjan Singh and others, 2017

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(1) Law Herald 464 (P&H)

Similarly, before arriving at a judicious conclusion, the learned Additional District Judge rightly re-considered and appreciated true facts of the case as well as the evidence available on record and found that findings recorded by the learned trial court were well justified. Relevant and cogent findings recorded by the learned first appellate court in para 10 of its impugned judgment, which deserve to be noticed here, read as under:-

“ The claim of the appellants is that Harinder Pal Singh attorney of defendants No.1 to 3 along with Bhag Singh son of Harnam Singh entered into an agreement to sell dated 28.12.1987 with the plaintiffs and in view of the terms and conditions of the said agreement defendants No.1 to 3 of the terms and conditions of the said agreement defendants No.1 to 3 along with Harinderpal Singh and Bhag Singh were to execute the sale deed in favour of the appellants on or before 2.3.1988 on payment of balance sale consideration. On account of non execution of the sale deed by Harinder Pal Singh attorney of defendants No.1 to 3 along with Bhag Singh in favour of the plaintiff/appellants a suit for specific performance was preferred and the said suit was partly decreed in favour of the plaintiffs/appellants, whereas, suit seeking sale of share of defendants No. 1 to 3 in favour of the plaintiffs, was dismissed. But since the extension of the agreement to sell dated 28.12.1987 the plaintiffs are in possession over the property in dispute and their possession is continuous, peaceful, uninterrupted and due to the passage of period of 12 years, the plaintiffs have become owners of the suit land by way of adverse possession. Though the defendants have not come to contest the

claim of the appellants, but close scrutiny of the whole record itself reveals that the plaintiffs/appellants claim their possession on the basis of agreement to sel dated 28.12.1987. So, as per their claim, it was permissive possession and where possession claimed by a person is permissive, he cannot lay his claim regarding ownership on the basis of adverse possession. More so, the learned lower court, after placing reliance upon the revenue record, i.e. jamabandi for the years, 1988-89 Exs. P8 and P9, jamabandi for the years 1993-94 Exz P10 and P11, for the years 1998-99 Exs.P12 and P13 arrived at a conclusion that the plaintiffs/appellants are holding unauthorized possession over the property in dispute. So, under these circumstances, the plaintiff is not entitled to lay his claim of ownership on the basis of adverse possession especially when his possession was permissive on the property in dispute and he has failed to establish as to how his possession, which was permissive, became hostile, notorious and uninterrupted. Moreover, the appellant being the plaintiff cannot lay his claim of ownership rights as plea of adverse possession cannot be used as a sword, but can be taken as shield only.”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a 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 regard, reliance can be placed on the law laid down by the Hon’ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and

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Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.

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 misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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.

25.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No