

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

**RSA No.855 of 2015
Date of decision:28.2.2017**

Arjan Singh

...Appellant

Versus

Gulzar Singh (since deceased) through his LRs

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms.Rupinder K.Thind, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned judgments and decrees passed by the learned courts below, whereby his suit for declaration and permanent injunction was dismissed, plaintiff has approached this Court by way of present regular second appeal.

Brief facts of the case, as noticed by the learned first appellate court in para 4 of the impugned judgment, are that the appellant/plaintiff filed a suit for declaration against respondent/defendant Gulzar Singh to the effect that plaintiff was owner in possession of land measuring 55 kanals 4 marlas bearing khata/khatuni no.67/174, Khasra Nos.3/21/1(5-4), 21/2(2-8), 19/2(2-11), 20/2(5-3), 22/1(2-8), 6/5/2 (1-3), 7/1 (7-4), 2(8-0), 9(6-19), 10/1 (4-17), khata/khatuni no.66/173 Khasra no.4/16 (7-12) situated in the revenue estate of village Dadupura, Tehsil and Distt. Amritsar and for permanent injunction restraining the defendant from alienating the suit land in any manner to any person or getting it partitioned on the ground that defendant was owner in possession of land to the extent of ½ share out of 47 kanals 2 marlas as detailed in the head note of the plaint. Defendant was

also owner in possession of the land to the extent of 1/8th share out of land comprised in khasra no.4/16, khata khatuni no.66/173 measuring 7 kanals 12 marlas. In the year 1988, plaintiff exchanged his land with one Bachan Singh and became owner of the land belonging to Bachan Singh. Plaintiff had also taken forcible possession of the land belonging to defendant i.e. 1/2 share out of the land measuring 47 kanals 12 marlas and 1/8th share out of the land measuring 7 kanals 12 marlas i.e. total measuring 24 kanals 15 marlas. Plaintiff was in cultivating possession of the said land considering himself as owner thereof right from the year 1988 up to date. The possession of the plaintiff regarding land of the defendant measuring 24 kanals 15 marlas became adverse, hostile, open, continuous and to the knowledge of the whole world including the defendant and had ripened into ownership and the plaintiff became owner of the said land as detailed in the head note of the plaint. Plaintiff had got installed tubewell in the land in question which was run by 3 HP electric motor and he was in cultivating possession of the said land and had sown crop in it. The land in question was Banjar Qadim and uneven. The plaintiff had spent about Rs.3.00 lacs on the said land and made it fit for cultivation. Defendant had got no right, title or interest in the suit land but he had falsely filed an application for partition of the land against the plaintiff which was not maintainable. The plaintiff requested the defendant to admit his claim regarding his ownership over the land in dispute, but defendant refused to accept the same and gave a threat to alienate the same to other person which he has no right to do so. Hence this suit.

Having been put to notice, defendant put appearance and filed his contesting written statement, raising more than one preliminary

objections. On completion of pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the plaintiff is entitled to a decree for declaration as prayed for?OPP.
2. Whether plaintiff is entitled to a decree for permanent injunction as prayed for?OPP
3. Whether the suit is not maintainable in the present form?OPD
4. Whether plaintiff has no locus standi and cause of action to file the present suit?OPD
5. Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD
6. Whether plaintiff has no come to the court with clear hands and has suppressed the material facts from the court, if so, its effect? OPD
7. Whether suit is bad for non joinder of necessary parties? OPD
8. 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. Accordingly, his suit for declaration, claiming ownership on the basis of adverse possession and also for permanent injunction was dismissed vide impugned judgment and decree dated 10.1.2012.

Dissatisfied, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 22.08.2014. Hence this regular second appeal, at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

It has gone undisputed before this Court that the entire case of the plaintiff-appellant was based on his plea of adverse possession. Appellant being plaintiff, this plea of adverse possession was not available to him, as per the settled proposition of law. During the course of hearing, when confronted as to how the suit for declaration of the plaintiff-appellant was maintainable on the plea of adverse possession, learned counsel for the appellant had no answer and rightly so, it being a matter of record. Having said that, this Court feels no hesitation to conclude that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld.

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

1. **Govindammal Vs. R.Perumal Chettiar & others, 2007 (3) RCR (Civil) 569;**
2. **Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan & others, 2009 (16) SCC 517;**
3. **Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and another, 2014 (1) SCC 669;**
4. **Bhim Singh and others Vs.Zile Singh and others, 2006(3) RCR (Civil) 97;**
5. **Dewaki and others Vs. Dayawanti and others, 2006(3) RCR (Civil) 75**

Similarly, in view of two Full Bench judgments of this Court in **Bhartu Vs. Ram Sarup, 1981 PLJ 204** and **Ram Chander Vs.Bhim Singh and others, 2008(3) RCR (Civil) 685**, relief for permanent injunction was

also not available to the plaintiff-appellant against the defendant-respondent, both the parties being co-sharers of each other. When the learned counsel for the appellant was asked as to how this relief of injunction would be available to the plaintiff-appellant, the suit land being joint property amongst co-sharers, she had no answer and rightly so, this also being a matter of record. Under these undisputed peculiar facts and circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while recording their concurrent findings of facts and the impugned judgments and decrees deserve to be upheld, for this reason also.

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. She 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 present 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 instant regular second 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 present regular second appeal stands dismissed, however, with no order as to costs.

28.2.2017**mks****(RAMESHWAR SINGH MALIK)****JUDGE**

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