

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

R.S.A. No. 791 of 2014 (O&M)

Date of Decision:17.11.2017

Inder Singh

.....Appellant

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Gulrej Khan, Advocate for
Mr. Amit Kumar Goyal, Advocate
for the appellant.

Mr. Manoj Kumar Sangwan, DAG Haryana.

Mr. Ranvijay Singh, Advocate for
Mr. Amit Arora, Advocate
for respondent No.3.

AVNEESH JHINGAN, J.

C.M. No.1779-C of 2014

This is an application for condonation of delay of 147 days in filing the appeal. Notice was issued only in civil miscellaneous application.

For the reasons stated in the application, which is duly supported by an affidavit and after hearing learned counsel for the parties, the application is allowed and delay of 147 days in filing the appeal is condoned.

RSA No. 791 of 2014

The present appeal is at behest of the plaintiff being aggrieved

of concurrent dismissal of his suit for declaration with consequential relief of permanent injunction, vide judgment and decree dated 23.04.2011 as well as dismissal of Ist Appeal by the First Appellate Court, vide judgment and decree dated 16.04.2013.

For the purpose of convenience, the parties are being referred as per their original position in the plaint.

The facts giving rise to the present litigation are that plaintiff filed a suit for declaration with consequential relief of permanent injunction claiming himself to be owner in possession of residential house shown in red colour and with letters 'A' B' C' D' E' in the site plan. The detail of the property was given in the suit. It was averred that the plaintiff was in continuous possession of the suit property since the time of his ancestors. It was further averred that he was in possession of the suit property for the last more than 20 years openly without any obstruction and had become owner thereof by way of adverse possession. On coming to know that defendant No.3, in collusion with defendants No.1 and 2, intend to interfere in the peaceful possession of the plaintiff and to demolish his house, the suit was filed.

On notice defendants No. 1 and 2 filed their joint written statement and defendant No.3 filed his separate written statement.

The learned Trial Court framed the following issues:

- (1) Whether the plaintiff is owner in possession of the house in dispute since time of his forefather, as alleged in the head note of the plaint, if so to what effect?OPP
- (2) Whether the plaintiff has no locus standi to file the present suit?OPD
- (3) Whether the suit is not maintainable in the present form?OPD

(4)Relief.

In order to support the suit, the Special Power of Attorney of the plaintiff appeared as PW1.

In order to rebut the claim in the suit, Tara Chand, defendant No.3, appeared as DW1. Deep Chand appeared as DW2, Clerk from DC Office Jagdish appeared as DW3 and Halqa Patwari-Surender appeared as DW4.

The learned trial Court, after appreciating the facts of the case and considering the evidence produced, decided issue No.1 against the plaintiff and issues No. 2 and 3 were jointly dealt with and answered against the defendants as not argued. Consequently, the suit was dismissed.

Being aggrieved of the judgment and decree, the appeal was filed by the plaintiff. The District Judge, Bhiwani, vide judgment and decree dated 16.04.2013, dismissed the appeal. Hence, the present regular second appeal has been filed.

Following three questions of law have been framed in the present appeal:

- (i)Whether the orders passed by the courts below are based on conjecture and surmises?
- (ii) Whether the Courts below have failed to apply their judicial mind in accepting the plea of the defendant that the plaintiff is not entitled to the relief prayed in the suit in question?
- (iii)Whether the possession of the plaintiff over the suit property for more than 20 years amounts to adverse possession and the respondent party is not entitled to any relief as the plaintiff has duly proved his ownership and possession?

At the time of arguments, the counsel restricted his arguments

to question No.3. He contended that the plaintiff was possessing the suit

property for the last 20 years and therefore, he has become owner of the property by way of adverse possession.

The legal aspect of the issue raised is no longer res-integra.

The law is well settled that the plea of adverse possession can be taken as a defence and cannot be used as a sword to claim declaration of ownership.

The Hon'ble Apex Court in case reported as **Gurdwara Sahib Versus Gram Panchayat Village Sirthala and another**, (2014) 1 Supreme Court Cases 669, has held as under :-

“There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

This court in **Bhim Singh and others Versus Zile Singh and others**, 2006 (3) RCR (Civil) 97, has held as under :-

“11. Under Article 64 of the Limitation Act, a suit for possession of immovable property by a plaintiff, who while in possession of the property had been dispossessed from such possession, when such suit is based on previous possession and not based on title, can be filed within 12 years from the date of dispossession. Under Article 65 of the Limitation Act, a suit for possession of immovable property or any interest therein, based on title, can be filed by a person

claiming title within 12 years. The limitation under this Article commences from the date when the possession of the defendant becomes adverse to the plaintiff. In these circumstances, it is apparent that to contest a suit for possession, filed by a person on the basis of his title, a plea of adverse possession can be taken by a defendant who is in hostile, continuous and open possession, to the knowledge of the true owner, if such a person has remained in possession for a period of 12 years. It, thus, naturally has to be inferred that plea of adverse possession is a defence available only to a defendant. This conclusion of mine is further strengthened from the language used in Article 65, wherein, in column 3 it has been specifically mentioned “when the possession of the defendant becomes adverse to the plaintiff”. Thus, a perusal of the aforesaid Article 65 shows that the plea is available only to a defendant against a plaintiff. In these circumstances, natural inference must follow that when such a plea of adverse possession is only available to a defendant, then no declaration can be sought by a plaintiff with regard to his ownership on the basis of an adverse possession.

12. to 17. x x x

18. It is apparent from the observations made by the learned First Appellate Court that the status of the plaintiffs had been described differently in different revenue entries and at some point of time the plaintiffs had even been described as mortgagees. In these circumstances, the plaintiffs have not been able to prove that

their possession was adverse/hostile to the real owners and to the knowledge of such true owner. A mere long possession cannot be taken to be an adverse possession.”

Further, this court following the aforesaid decision in **Bhim Singh's case** (supra) in **State of Haryana Versus Mukesh Kumar and others**, PLR (2009) 154, page 753, held as under :-

“In Bhim Singh's case (supra), this Court has authoritatively held that a suit for declaration by a person claiming ownership of immovable property by way of adverse possession is not maintainable. Learned counsel for the appellant was unable to cite any judgment contrary to this.”

In the aforesaid decisions, legal position enunciated is that suit for declaration by a person claiming ownership by way of adverse possession is not maintainable.

The factual matrix of the present case are that defendant No.3 had moved an application for demarcation of the suit property and it was found that the plaintiff was illegally encroaching upon the land owned by defendant No.3. Jamabandi Ex.P3 and Ex.D1 for the year 2002-03, show that defendant No.3 Tara Chand has been recorded as owner in possession over rectangle No. 88, Killa No.19/4/13 measuring 3 marlas gair mumkin plot.

PW-1 Dinesh Kumar Special Power Of Attorney of the plaintiff has not claimed the ownership of the suit property but has claimed ownership by adverse possession. It was not disputed that the said suit property was allotted to defendant No.3 by Gram Panchayat. This was a fact

which was personally known to the plaintiff but he himself had not appeared in the witness box. The Special Power of Attorney appointed could not have deposed about the said fact. Halqa Patwari had proved the demarcation report Ex.DW3/C conducted on 4.10.2008.

From the evidence produced before the Courts below, it was duly established that the plaintiff had encroached upon the plot owned by defendant No.3 and had constructed "khuddi" there. The plaintiff has failed to establish the basic requirements for claiming adverse possession i.e. he has failed to prove open, peaceful, continuous and hostile possession over the suit property which was hostile and in denial of true owner's title.

There cannot be any quarrel on the proposition that the entries in revenue records raise a rebuttable presumption. Reliance is placed on the Full Bench decision of this Courts in Ram Chander Versus Bhim Singh and others, 2008 (3) RCR (civil) 685 wherein it was held as under:

"22. Revenue entries reflect the rights of the parties as opposed to conferring rights and raise rebuttable presumptions as to their correctness. They reflect an existing state of affairs, namely, an existing title or a state of possession. Entries in revenue records neither confer nor deprive a person of his title, whether joint or separate. Rectangle numbers and kills numbers are revenue measures, used by revenue authorities to identify and describe fields that constitute the ownership of a land owner. A holding may be divided into different khewats, khataunis, rectangles and killas/khasras all bearing different numbers. Where parties are joint owners or co-sharers, the land would comprise of a khewat or khewats, different khataunis, rectangles and/or khasra/killas numbers. Thus, where a group of land owners holds land in joint ownership and are reflected as owners in

common of the khewat, commonly known as the joint khewat, they would continue to remain owners in possession of the land, though described as being situated in different khataunis, rectangles and khasra/killla numbers. Division of land into different rectangles, khasra or killla numbers does not alter the nature of property held in common or the rights of co-sharers flowing therefrom. The Full Bench in Lachhman Singh's case (supra) disregarded the nature of joint property and by placing undue reliance upon artificial divisions of land meant to identify land, erred while holding that a vendee, who purchases land from a joint khewat by reference to specific rectangles and khasra numbers, does not become a co-sharer in the entire joint khewat."

In the present case the presumption of ownership in revenue entries has not been rebutted. Rather the plaintiff only claimed declaration on the basis of adverse possession.

The suit for declaration on the ground of adverse possession is not maintainable. Hence, the contention of plaintiff is liable to be rejected. It has been established on record that plaintiff had encroached upon the suit land.

During the course of hearing, learned counsel for the appellant also could not point out any illegality or perversity in the impugned judgment passed by the learned first appellate court. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

The cogent findings recorded by the learned first appellate

court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgment and decrees passed by both the Courts below and the same deserves to be upheld.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant Regular Second Appeal is dismissed, however, with no order as to costs.

17.11.2017.
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No