

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

Regular Second Appeal No. 2205 of 1988(O&M)

Date of Decision: December 20 , 2018.

Mohinder Chand through LRs

..... APPELLANT (s)

Versus

Bir Bhan through LRs and another

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Munish Gupta, Advocate
for the appellant.

Mr. R.K.Gupta, Advocate
for respondent No.1.

Ms. Shirpa Rani, Advocate for
Mr. J.S.Bhatia, Advocate
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Appellant/defendant No.2 is aggrieved of judgment and decree dated 11.08.1988 passed by the learned Additional District Judge, Patiala whereby appeal preferred by respondent No.1 in this appeal i.e. the plaintiff, against the judgment and decree dated 18.02.1986 passed by the learned Sub Judge, IInd Class, Rajpura was accepted and suit for possession filed by the plaintiff was decreed.

Brief facts necessary for the adjudication of the case are that, respondent No.1/plaintiff – Bir Bhan filed a suit for possession of the house as detailed in the plaint. It was contended that Karam Chand (father of the plaintiff) son of Chet Ram was the owner of the house in dispute. Karam Chand purchased the house in question in an open auction in the year 1935. It was further pleaded that plaintiff's father -Karam Chand used to reside at Delhi whereas his brother Amar Nath i.e., defendant No.1 (respondent No.2 in this appeal) used to reside at Rajpura. Defendant No.1 – Amar Nath is the real brother of Karam Chand. Amar Nath used to manage the house in dispute on behalf of Karam Chand. Rent from the tenant was received by Amar Nath and handed over to Karam Chand during his life time. Karam Chand died 40 years prior to the filing of the suit leaving behind the plaintiff, his only legal heir. It was averred that defendant No.1-Amar Nath used to collect rent from the tenant even after the death of Karam Chand and hand over the amount to the plaintiff. However, defendant No.1-Amar Nath without any right or title sold the house in dispute to defendant No.2 i.e., the present appellant (now represented by his legal representatives). Hence, suit was filed.

Suit was resisted by the defendants. Separate written statements were filed by them raising various preliminary objections and averments on merits were controverted. Defendant No.1-Amar Nath denied Karam Chand (father of the plaintiff) to be the owner of land in dispute. Defendant No.1 pleaded that the land in question was his self-acquired property and the house thereon was constructed by him. It was denied that he ever managed the house in dispute on behalf of the plaintiff's father – Karam Chand at any point of time or that he

collected rent of that house and handed it over to Karam Chand or the plaintiff. It was claimed that defendant No.1 was in possession of the house for the last 40 years and his possession was adverse to the whole world. Defendant No.1-Amar Nath claimed himself to be the owner of the property in question and one room of the house, it was pleaded, was validly and legally sold to defendant No.2 i.e., the present appellant. Defendant No.2, it was claimed, forcibly occupied the whole house. Separate written statement was filed by the present appellant (defendant No.2) pleading that the plaint was liable to be rejected as the site-plan was not attached. Moreover, the sale-deed was not challenged, therefore, suit for possession was not maintainable. It was denied that Karam Chand was the owner of the house in dispute or that Karam Chand was even the father of the plaintiff. Appellant claimed to have purchased the house through a registered sale-deed dated 12.04.1979 for a sum of ₹2600/- from Amar Nath (defendant No.1). It was further pleaded that one Sadhu Ram had filed a suit for specific performance by pleading a false agreement to sell with Amar Nath and the said suit was also dismissed on 23.02.1981. Present suit, it was claimed, was filed on false grounds. Dismissal of the suit was prayed for by the defendants. Replication was filed.

From the pleadings of the parties, the following issues were framed by the learned Tribunal:-

1. Whether the suit is maintainable in the present form? OPP
2. Whether the house in dispute was owned by Karam Chand and plaintiff is son of Karam Chand? OPP
3. Whether the house in dispute was purchased by Karam Chand in open auction? If so, its effect? OPP
4. Whether defendant No.1 is owner and he is in possession of the house in dispute? OPD
5. Whether the defendants have acquired ownership of the house in dispute by virtue of adverse possession? OPD
6. Whether the suit has been properly valued for the purpose of

- court fee and jurisdiction? OPD
7. Whether the suit is within limitation? OPD
 8. Whether the plaintiff is estopped by his own conduct to file the present suit? OPD
 9. Whether the plaintiff is entitled to possession of the house in dispute? OPP
 10. Relief.

Learned trial court also framed an additional issue as under:-

- 9A. Whether defendants are entitled to compensatory costs as alleged? OPD

Evidence was led by both the parties to substantiate their respective claims.

Learned trial court while noting the stand of the defendants accepted that the plaintiff was the son of Karam Chand, however dismissed the suit on the ground that the plaintiff failed to prove that his father Karam Chand had purchased the property in question or was the owner thereof. It was further concluded that defendant No.1-Amar Nath had become owner of the property in dispute by way of adverse possession as he had been using the house in question as its owner for the last 40 years. Appeal preferred by the plaintiff/respondent No.1 was allowed by the learned Additional District Judge, Patiala vide judgment and decree dated 11.08.1988. It was concluded by the learned first appellate court that Karam Chand, father of the plaintiff, was proved to be the owner of the house in question on the basis of the evidence on record. The defendants, it was held, failed to prove adverse possession of the property in dispute. Therefore, suit for possession of the house filed by respondent No.1/plaintiff was decreed. Aggrieved therefrom, present appeal has been filed by defendant No.2.

This appeal was admitted vide order dated 20.01.1989. Following substantial questions of law were permitted to be taken up vide order dated

11.07.2014:-

- “(a) Whether the judgment of the learned lower Appellate Court is based upon misreading and mis-appreciation of evidence on record of the case?
- (b) Whether the learned lower Appellate Court was not justified in allowing the appeal by treating the document Ex.PX as a title Deed?
- (c) Whether without registration of a document of the value of more than Rs.100/- title can be created?
- (d) Whether Ex.PX without proof by anybody and being not related to the property in question does create any title in Bir Bhan alleging LR of Karam Chand?
- (e) Whether the findings recorded by the learned lower Appellate Court are legally sustainable in the eyes of law?
- (f) Whether the findings of the learned lower Appellate Court are based on misreading of the evidence in question?”

Learned counsel for the appellant vehemently argues that the document (Ex.PX) has not been proved on record in accordance with law. No official has been examined to prove the said document. There is nothing on record to show that the installments in question were paid by Karam Chand. Furthermore, the suit in question is barred by limitation. It is further submitted that there is no explanation as to why the plaintiff did not file a suit at an earlier point of time. Moreover the appellant, it is submitted, is proved to be a bona-fide purchaser of the property vide registered sale-deed dated 12.04.1979. Learned First Appellate Court, it is contended, has grossly erred in law and on facts in accepting the appeal filed by the plaintiff/respondent No.1 and setting aside the well-reasoned and logical judgment dated 18.02.1986 passed by the learned trial

court. Suit filed by the plaintiff has been wrongly decreed by the learned first appellate court. It is thus prayed that the present appeal be allowed, judgment and decree dated 11.08.1988 passed by the learned Additional District Judge, Patiala be set aside and that of the learned trial court be upheld. Consequently, suit filed by respondent No.1 be dismissed throughout.

Learned counsel for the respondents however refutes the averments as above and submits that impugned judgment and decree dated 11.08.1988 passed by the learned Additional District Judge, Patiala be upheld being reasonable and based on proper appreciation of the facts and evidence on record. Document (Ex.PX), it is submitted, is a public document over 30 years old. Therefore, as per the Indian Evidence Act, the same is admissible in evidence. It is further submitted that it is proved on record that the plaintiff's father Karam Chand purchased the property in question wayback in the year 1935, therefore, defendant No.1-Amar Nath had no right or title over the property and he could not convey a title better than what he had. It is thus prayed that this appeal be dismissed.

I have heard learned counsel for the appellant and have gone through the record with their able assistance.

The case set-up by the plaintiff is that the house in dispute was purchased by Karam Chand in an auction conducted by the government of erstwhile State of Patiala being Nazool property. Reliance has been placed on the document (Ex.PX), which is a copy of the entry in the register of 'Imilaak Nazool Sarkar' in respect to the properties sold in auction. It is mentioned therein that House No.2 was sold to Karam Chand son of Chet Ram, Tarkhaan (carpenter) for

a sum of ₹300/- by order 03.05.1935 of 'Ijlas-i-Khas' (Council of Regency in the erstwhile State of Patiala) in auction. Dimensions of the property are duly mentioned. Ex.PX is a certified copy issued by the Sub Divisional Officer (Civil), Rajpura. Said document was over 45 years old at the time of filing of the suit and is clearly admissible in evidence. There is nothing on record to indicate that the said document is forged or fabricated. There is no merit in the argument raised by learned counsel for the appellant that the auction in question was not proved to have been confirmed as no sale certificate etc. was placed on record. Perusal of the said entry shows that the sale was confirmed by Ijlas-i-Khas and Karam Chand had paid all the installments due. It is relevant to note that Ijlas-i-Khas admittedly means an order passed by the Council of Regency of erstwhile State of Patiala.

Reference, at this stage, can gainfully be made to oral testimony in the shape of PW1 Som Nath, PW2 Ram Chand and PW3 Bir Bhan, the plaintiff himself which cements and buttresses the claim put-forth by the plaintiff. PW1 Som Nath and PW2 Ram Chand specifically stated that house in question was purchased by Karam Chand in an auction. PW1 Som Nath stated that defendant No.1-Amar Nath was managing the said house while residing at Rajpura, but he was not the owner of the house in question. Description of the property has been mentioned by PW1 Som Nath. PW2 Ram Chand deposed on similar lines.

It is further relevant to note in this case that defendant No.1 – Amar Nath set-up a specific case of being an owner of the property in question having purchased the same. Defendant No.1-Amar Nath in his written statement specifically pleaded that the suit property in question was purchased by him after

the death of Karam Chand and the house was constructed thereon by him. The house was claimed to be self-acquired property of defendant No.1-Amar Nath. However, there is not an iota of evidence on record to prove that Amar Nath purchased this property or that it is his self-acquired property. Furthermore, at no stage did Amar Nath raise the plea of being owner of the property in question by way of adverse possession. Needless to say, Amar Nath could not have conveyed a better title to the present appellant by way of sale-deed dated 12.04.1979. Appellant cannot be held to be a bonafide purchaser in the facts and circumstances of this case.

It has been rightly held by the learned Additional District Judge, Patiala that onus of proving adverse possession is on the person setting up such a plea. The burden of proving that Amar Nath was not in permissive possession and the same was adverse to the true owner, was obviously upon the defendants. It is a settled position of law that length of possession does not clothe any one with adverse possession. Therefore, it cannot be concluded by any stretch of imagination that the defendants (Amar Nath or the present appellant) became owners by way of adverse possession.

There is thus no illegality or infirmity in the finding returned by the learned Additional District Judge, Patiala. It is further rightly held that suit in question was not barred by limitation as the present is a suit for possession on the basis of title. Thus, the substantial questions of law as above permitted to be placed on record, are answered in favour of the respondent/plaintiff and against the appellant.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, I do

not find any infirmity, illegality or perversity in the impugned judgment and decree dated 11.08.1988 passed by the learned Additional District Judge, Patiala whereby appeal preferred by respondent No.1/plaintiff against the judgment and decree dated 18.02.1986 passed by the learned Sub Judge, IInd Class, Rajpura was accepted, which warrants any interference by this Court.

Present appeal is, consequently, dismissed with no order as to cost.

December 20 , 2018.
'om'

(LISA GILL)
JUDGE

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