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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-829-1988 [O&M]
Date of Decision : March 26, 2018

Smt. Jaswant Kaur and others Appellants

Versus

Jit Singh alias Ajit Singh and others .. Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr. G.S.Jaswal, Advocate,
for the appellants.

Mr. K.S.Dadwal, Advocate,
and Ms. Neha Jain, Advocate,
for the respondents.

SHEKHER DHAWAN, J.

Present Regular Second Appeal is directed against the concurrent findings of both the Courts below, whereby, suit filed by plaintiff-appellants was dismissed by the Court of first Instance vide judgment and decree dated 28.04.1987. The appeal filed by the present appellants was also dismissed by learned District Judge, Hoshiarpur vide judgment and decree dated 08.01.1988.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that the plaintiffs, being sons and daughters of Dalip Singh, filed

a civil Suit for possession of land measuring 2 Kanals 5 Marlas towards the Southern side out of land measuring 4 Kanals bearing Khewat No.325, Khatauni No.392, Khasra No.6/17/2(3-3), Khewat No.481, Khatauni No.569, Khasra No.6/17/4/2(0-17) entered in Jamabandi for the year 1981-1982 situated in village Kadiana, Tehsil and District Hoshiarpur. Their father, Dalip Singh, was the owner of the suit land, who had sold one half share of his land to Jit Singh alias Ajit Singh (defendant No.2) and the mutation was sanctioned in favour of defendant No.1. Thereafter, plaintiffs filed a suit for declaration for enforcement of their reversionary rights and challenged the sale as illegal and not binding upon them. The said suit was decreed in their favour on 16.03.1964. The first appeal filed by defendant - Jit Singh was dismissed on 10.09.1984. During pendency of Regular Second Appeal No.575 of 1964, the matter was finally decided by this Court vide order judgment 10.12.1971 (Ex.P/27) as compromise was arrived at between the parties thereby the plaintiffs were declared entitled to one-half share of the land originally sold by Dalip Singh.

4. As per the plaintiffs, thereafter consolidation of holdings took place and the land mentioned in paragraph No.6 was formed in lieu of old land. As per the compromise, the plaintiffs were entitled to the land measuring 2 Kanals 5 Marlas. However, defendant No.1 conspired with the village Patwari and got sanctioned the mutation in their favour regarding the suit land, measuring 2 Kanals 5 Marlas as well. Being aggrieved, the plaintiffs moved an application before the Public Grievance Officer, Hoshiapur for review of wrong mutation. As per the plaintiffs, the Patwari again sanctioned mutation on 19.11.1981 in favour of the defendants and the said mutation is illegal and void and contrary to the decision of this

Court.

5. Defendants refused to admit the rights of the plaintiffs and also refused to hand over the possession of the land and, as such, the plaintiffs filed suit for possession of 2 Kanals 5 Marlas of land.

6. Defendant No.1 contested the suit, *inter~alia*, taking the pleas that the suit was barred by law of limitation as defendant No.1 had become owner of the suit land by way of adverse possession. As per defendant No.1, mutation was sanctioned on the basis of existing facts and there was no connivance between the village Patwari and defendant No.1. The suit was prayed to be dismissed.

7. On the pleadings of the parties, following issues were framed by the Court of first instance:-

- “(1) Whether defendant No.1 has become the absolute owner of the property in question by adverse possession? OPD.1.
- (2) Whether the suit is barred by time? OPD.
- (3) Whether the suit is bad for nonjoinder of necessary parties? OPD.
- (4) Whether the suit is not maintainable? OPD.
- (5) Whether the plaintiffs are estopped from filing the present suit by their acts and conduct? OPD.
- (6) Whether the plaintiffs are successors-in-interest of Nirmal Singh? OPD.
- (7) Whether the plaintiffs are entitled to take possession of the land in suit? OPP.
- (8) Relief.”

8. Plaintiff No.2 - Arjan Singh appeared as witness before the trial Court and also examined Balraj Kaur, Deed Writer, Bhagwant Kishore,

Clerk, Harkishan Singh, Patwari, Harcharan Singh, Mohaorir Mal and Mohinder Singh, Office Kanungo. From defendants' side, Swaran Singh, Harbhajan Singh and Ajit Singh appeared apart from leading documentary evidence.

9. Learned trial Court, after considering the material and evidence available on the file, recorded the finding that defendant No.1 had become owner of the suit property by way of adverse possession and on the basis of findings on different issues, the suit of the plaintiffs was dismissed.

10. Being aggrieved of passing of the said judgment and decree dated 28.04.1987, the plaintiffs filed appeal before the first Appellate Court and learned District Judge, Hoshiarpur vide judgment and decree dated 08.01.1988 dismissed the said appeal being devoid of any merit. As such, the present Regular Second Appeal before this Court.

11. At the hearing, the following substantial questions of law were raised by learned counsel for the parties for consideration by this Court:-

- (1). Whether Jit Singh alias Ajit Singh, defendant No.1, has become owner of the suit land by way of adverse possession?**
- (2). Whether the suit was filed beyond the period of limitation?**

12. Learned counsel for both the parties raised arguments in support of their contentions. Learned counsel for the appellants contended that undisputedly, the first round of litigation was settled on the basis of compromise and the order passed by this Court on 10.12.1971 (Ex. P-27) whereby, the plaintiffs were held entitled to one-half share of the land sold by Dalip Singh, father of the plaintiffs. For facility of reference, the order dated 10.12.1971 is extracted below:-

“ In view of the statements of the parties recorded today, both Regular Second Appeals Nos.575 of 1964 and 147 of 1965, are allowed to this extent that the plaintiffs' suit will stand dismissed qua half the land in dispute and the decree of the Court below is modified to this extent that a decree for half of the land in dispute will stand passed in favour of the defendant-appellants. While dividing the land Khasra No.22/29, will be allotted to the plaintiff-respondent. The choice is with the appellant to surrender possession of half of the land including Khasra No.22/29, but the lot will be given at one place and not in different places. The possession should be delivered within two months from today failing which the respondent will be entitled to claim partition in the revenue Court and in that event would be entitled to *mesne profits* and costs of this appeal. Otherwise the parties will bear their own costs throughout.”

13. However, the defendants failed to deliver the possession of the said land. As such, the plaintiffs continuously raised their demand and in that process, Arjan Singh, one of the plaintiffs had also filed an application before the Public Grievance Officer at Hoshiarpur and also moved application for demarcation of his share of land, but still the village Patwari sanctioned wrong mutation on 19.11.1981 which is completely against the spirit of the order passed by this Court on 10.12.1971. There was no question of uninterrupted possession by the real owner of the property, who are none-else but co-sharers on the basis of order, dated 10.12.1971 (Ex. P/27).

14. Learned counsel for the appellants also contended that the suit on the basis of adverse possession against co-sharers is not maintainable. On this point, reliance was placed on the judgment from Hon`ble Supreme Court in **Govindammal Vs. R. Perumal Chettiar & Ors., 2007(3) R.C.R. (Civil) 569** wherein, while referring to the earlier decision in **Nirmal**

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the Apex Court observed that in order to succeed on the ground of ouster, a person setting up ouster is bound to show that he did set up an adverse or independent title during the period which was beyond the statutory period of 12 years. Their Lordships further observed that there can be no adverse possession by one co-sharer as against others until there is an ouster or exclusion; and the possession of a co-sharer becomes adverse to the other co-sharer from the moment there is ouster. Therefore, what is ouster and what is adverse to the interest of the claimant depends upon each case.

15. While arguing on this point, learned counsel for the respondents contended that both the Courts below have already considered the entire material i.e., oral as well as documentary evidence and recorded finding that the defendants had become owner of the property by way of adverse possession. The defendants were recorded as owners as per record long-back and as per the revenue record of the year 1971, but there was no challenge to that title except filing of present suit in the year 1984 which is beyond the period of limitation of 12 years. More so, the rights of the defendants as owners and their possession on the suit property, which was open and hostile to the knowledge of the plaintiffs, was a fact known to one and all, as the plaintiffs admitted in their evidence that the defendants had been selling some part of their land way back in the year 1975. That way, the possession of the defendants on the suit land was uninterrupted, open and hostile to the knowledge of every body and to the knowledge of the plaintiffs as well and the defendants had become owner by way of adverse possession of the suit land and both the Courts below have already

recorded the finding of facts and are correct as per law and the said findings do not call for any interference and the present appeal be dismissed.

16. On this point, reliance was placed upon the judgments from the Co-ordinate Benches of this Court in Mithu Ram and Others Vs. Lal Singh, 2013(31) R.C.R.(Civil) 784; Major Singh and another Vs. Mukhtiar Singh, 2009(4) R.C.R. (Civil) 97; Sita Ram Vs. Smt. Mahadi and others, 2006(3) R.C.R. (Civil) 42; and Satpal and Ram Parkash Sehgal Vs. Karnail Singh, 2004(4) R.C.R. (Civil) 668.

17. Having considered the submissions made by learned counsel for the parties and appraisal of the record available on the file, this Court is of the considered view that most of the facts are not disputed that Dalip Singh had sold his land to defendant No.1 – Jit Singh alias Ajit Singh. The said sale was challenged by the plaintiffs, who are none-else but sons and daughters of Dalip Singh on the basis of reversionary rights. Their civil suit was decreed on 16.03.1964 in their favour. The appeal filed by defendant – Jit Singh was dismissed and in Regular Second Appeal before this Court, which was decided on 10.12.1971 vide Ex. P/27 by way of compromise, the plaintiffs were held entitled to half share of the land originally sold by Dalip Singh. The contention of the plaintiffs that the possession of the said land was not delivered to them. In the consolidation of land proceedings, the land detailed in para No. 6 was formed in lieu of old land. It is not disputed that as per this Court's order, Ex. P/27, the plaintiffs were to get 2 Kanals 5 Marlas of land. As the plaintiffs could not get their part of the land, Arjan Singh, one of the plaintiffs moved an application before the Public Grievance Officer, Hoshiarpur (Ex. P/8) on 18.2.1977. So, on the basis of

Ex. P/8, plaintiff Arjan Singh had certainly raised a challenge while asserting his ownership rights. The Courts below completely ignored these facts while recording the finding in favour of the defendant that the recital regarding possession of the defendant as owner was made uninterrupted and the defendant became owner by way of adverse possession. Law on the point is settled that ownership rights on the basis of adverse possession are that a person pleading adverse possession has no equities in his favour. In fact, he is trying to defeat the rights of the true owner and it is for him to clearly plead and establish all facts necessary to establish his adverse possession. A person who claims adverse possession should show:-

- “a). on what date he came into possession;
- b). what was the nature of his possession'
- c). whether the factum of possession was known to the other party;
- d). how long his possession has continued, and
- e). his possession was open and undisturbed.”

18. Such a view was taken by Hon'ble Supreme Court in **Saroop Singh Vs. Banto & Ors., 2005(4) R.C.R. (Civil) 599**. As per Hon`ble Apex Court, while determining the rights of the parties on the basis of adverse possession and as per Article 65 of the Evidence Act, 1963, the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff, but commences from the date defendant's possession becomes adverse. This was so held by Hon`ble Apex Court in **Vasantiben Prahladi Nayak and Others v. Somnath Muljibhai Nayak and Others, 2004(2) RCR (Civil) 276 (SC)**.

19. Till the time, the plaintiffs kept on challenging their rights and that too on the basis of judgment passed by this Court on 10.12.1971 (Ex. P/27), there is absolutely no reason to return the finding that the possession of the defendant as owner ripen into adverse possession more so, when they are co-sharers by virtue of order passed by this Court Ex. P/27 on the basis of compromise.

20. Similar matter was before Hon'ble Supreme Court in **Annakili Vs. A. Vedanayagam & Ors., 2007(4) R.C.R. (Civil) 780** wherein Hon'ble Supreme Court while discussing the concept and extent of adverse possession held that mere long possession for a period of more than 12 years without anything more, does not ripen into title. It was further observed that the claim by adverse possession has two elements : (i) the possession of the defendant should become *adverse* to the plaintiff; and (ii) the defendant must continue to remain in *possession* for a period of 12 years thereafter.

21. Both the Courts below have completely ignored the above facts and legal provisions and the same resulted into erroneous findings on different issues and the impugned judgments and decrees passed by the Courts below are set-aside and the suit of the plaintiffs is decreed that the plaintiffs are entitled for possession of land measuring 2 Kanals and 5 Marlas as detailed in the headnote of the plaint. The questions posed in para No. 11 herein are accordingly answered in favour of the plaintiffs and against the defendants.

22. Resultantly, the present Regular Second Appeal stands allowed and the judgment and decree dated 08.01.1988 passed by learned District Judge, Hoshiarpur whereby appeal filed by the plaintiff-appellants was

dismissed and the judgment and decree dated 28.4.1987 of learned Sub Judge Ist Class, Hoshiarpur, are set-aside and the suit of the plaintiffs is decreed that the plaintiffs are held entitled for possession of land measuring 2 Kanals and 5 Marlas as detailed in the headnote of the plaint. No costs.

(SHEKHER DHAWAN)
JUDGE

March 26, 2018
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes