

RSA No.1891 of 1994 (O&M)

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

RSA No.1891 of 1994 (O&M)

Date of decision:05.10.2018

State of Haryana

... Appellant

Vs.

Ram Chander and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana
for the appellant.

Mr. Som Nath Saini, Advocate
for respondents No.1, 2 and 4 to 6.

AMIT RAWAL J.

The appellant-defendant is in Regular Second Appeal against the judgment and decree dated 06.01.1994 rendered by the Lower Appellate Court, whereby, suit of the respondent-plaintiffs claiming ownership on the basis of long possession by setting up adverse possession, dismissed by the trial Court, has been decreed.

The respondent-plaintiffs instituted the suit against the Provincial Govt. of Haryana in respect of. agricultural land comprised in khewat no.371 khata no.632, khasra no.1470/850 total measuring 5 bighas 13 biswas situated in the village Kalu Pur, Tehsil and District Sonapat which was owned by the defendant, whereas, the plaintiffs had been in actual, physical and cultivating possession of the same since the time of their forefathers.

In order to establish the aforementioned possession, reference has been made to the jamabandies for the years 1955-56, 1959-60, 1963-64, 1968-69, 1973-74 and 1978-79.

After the death of Ram Diya and Jage Ram, who died in April 1981 and 15.07.1985, respectively, plaintiffs had been in joint adverse possession of the land since more than 30 years but the possession recorded in the jamabandi was "*bewaja najaiz kabja kasht*". Tehsildar (Sales) attempted to auction the property necessitating the plaintiffs to institute the suit for injunction. The injunction was declined but the Lower Appellate Court vide judgment and decree dated 20.05.1986 observed that since the ownership of the plaintiffs had matured by adverse possession, Rehabilitation Department had no right, title or interest in the aforementioned land.

The plaintiffs served the defendant with a legal notice dated 5.7.1990 under Section 80 C.P.C. The defendant contested the suit by raising various preliminary objections stating that suit land was evacuee and therefore, jurisdiction of the civil suit was barred under Sections 36 and 46 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short "1954 Act") and Administration of Evacuee Property Act, 1950 (for short "1950 Act"), respectively. The long and continuous possession of the plaintiffs was emphatically denied. In the judgment relied upon by the plaintiffs, it was held that possession was not exclusive and un-interrupted, much less peaceful.

The State acquired the ownership of property as per the provisions of Section 12 of 1954 Act. Title of the suit property, vide judgment dated 05.08.1986 was held to be of Provincial Govt.

Since both the parties were at variance, the trial Court framed as many as eight issues including the issue of relief. On preponderance of the evidence, the trial Court dismissed the suit but the Lower Appellate Court in appeal filed by the plaintiffs decreed the suit. In such circumstances, the State is in Regular Second Appeal.

Ms. Mamta Singla Talwar, learned Deputy Advocate General, Haryana appearing on behalf of the appellant submitted that the Lower Appellate Court erred in holding that appellant had completed more than 30 years of un-interrupted and peaceful possession, therefore, had acquired the ownership of the suit property as per provisions of Article 65 of Limitation Act by way of adverse possession. She submitted that a plea of adverse possession can be taken in defence but not in the affirmative. In support of the aforementioned contention, reliance was laid upon the judgment rendered by the Hon'ble Supreme Court in **Gurudwara Sahib Vs. Gram Panchayat village Sirthala and another 2013(4) RCR (Civil) 703; 2014 (1) SCC 669**. The long and settled possession cannot convert the same into title as per the judgment, *ibid*, particularly when the Provincial Government was held to be a owner. The aforementioned finding has not been assailed in any of the forums available under law, therefore, there is gross illegality and perversity in the judgment and decree under challenge.

Per contra, Mr. Som Nath Saini, learned counsel appearing on behalf of respondents No.1, 2 and 4 to 6 supported the findings rendered by the Lower Appellate Court that the possession of the plaintiffs had been hostile, peaceful, to the knowledge of the whole world, much less there was *animus possidendi*. There was no occasion for the plaintiffs to challenge the findings with regard to ownership of the plaintiffs as possession of the plaintiffs had been more than 12 years which ripened into title as per the provisions of Article 65 and Section 27 of the Limitation Act. In other words, it was submitted that ownership and title of the defendant stood extinguished as no steps were taken to take possession within a period of 12 years and thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below.

The issue with regard to claiming adverse possession had already been dealt with by Hon'ble the Supreme Court in paragraph 7 of the judgment cited (supra). Para 7 of the judgment reads as under:-

“7. In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable. There cannot be any quarrel to this extent 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 filed against the

appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

The plaintiffs could have justified in taking the stand by proving their possession to be adverse through direct and cogent evidence, had the defendant filed a suit for possession but not in the manner and mode and this aspect has totally been ignored by the Lower Appellate Court, thus, there is gross illegality and perversity in the findings, thus, findings are not sustainable.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case

(supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by

the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

As an upshot of my findings, the judgment and decree of the Lower Appellate Court is set aside and that of trial Court is restored.

Resultantly, regular second appeal is allowed.

However, it is made clear that in case, the plaintiffs take any appropriate steps to take the possession, it will not preclude the defendant to take appropriate defence in accordance with law and the trial Court shall decide the controversy uninfluenced with the findings rendered by this Court.

(AMIT RAWAL)
JUDGE

October 05, 2018

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No