

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

**RSA No.533 of 1994
Date of decision:25.07.2018**

Dhani ... Appellant
Vs.

Udesh Chand and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Amit Jain, Advocate
for the appellant.

Mr. S.K.Singla, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

Appellant has not been successful in seeking declaration qua ownership by way of adverse possession before the trial Court and Lower Appellate Court.

Succinctly, the facts which emanate from the pleadings of the parties are that plaintiff instituted the suit claiming owner in possession of agricultural land comprising in khewat no.3 khatoni no.45, 16//19 (8-0), 49//21 min (4-0), 22 min (4-0), 23 min (4-0), 23 min (4-0) measuring 24 kanals situated in village Mehmoodpur Rurki Tehsil and District Patiala on the premise that he alongwith his father had been in possession as owners for the last more than 20 years. Their possession had been open, hostile and animus possidendi and therefore, had acquired the title and ownership by way of adverse possession. Defendants no.1 to 7 had lost the right, title and

interest in the land did not assert ownership, in essence, they had become owners by efflux of time.

The suit was contested by the defendants on the ground of maintainability. The possession of the plaintiff was denied and counter claim was also set up. It was stated that land measuring 8 kanals bearing khasra no.16/19 was purchased by defendants No.8 to 10 from defendants No.1 to 7, vide sale deed dated 29.01.1988. Symbolic possession thereof was handed over. The plaintiff did not complete the requisite period of 12 (twelve) years and therefore, long possession could not ripen into ownership.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiff has become the owner in possession of the suit land by way of adverse possession?OPP*
- 2. Whether the plaintiff is entitled to declaration with consequential relief of injunction as prayed for?OPP*
- 3. Whether the suit is not maintainable?OPD*
- 4. Whether the suit is barred under Section 10 CPC?OPD*
- 5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD*
- 6. Relief.”*

Additional issues were also framed which read as under:-

- “5-A Whether defendants No.1 to 7 are entitled to possession of the suit land except khasra no.16//19(8-0) as counter*

claim?OPD

5-B Whether the suit is false, frivolous and defendants no.8 to 10 are entitled to special costs.”

The plaintiff in support of the averments examined himself as PW1 and brought on record copies of jamabandis and khasra girdawaris, i.e. Ex.P1 to Ex.P8. On the other hand, defendants examined Balbir Singh as DW1 and closed the evidence.

The trial Court on the basis of evidence brought on record dismissed the suit by holding that plaintiff had not been able to prove the possession but decreed the counter claim by ordering the possession of the suit land. The appeal laid before the Lower Appellate Court also met with the same fate.

Mr. Amit Jain, learned counsel appearing on behalf of the appellant submitted that the plaintiff in the affirmative had set up a plea of ownership on the basis of long and settled possession, thus, became the owner by efflux of time. Though, in view of the law laid down by Hon'ble the Supreme Court in **Gurudwara Sahib Vs. Gram Panchayat village Sirthala and another 2014(1) SCC 669**, the suit was maintainable but the defendants had not set up the counter claim as per the provisions of Order 8 Rule 6A of Code of Civil Procedure. In the absence of counter claim, appellant had been prevented from filing the written statement setting up the adverse possession. No issue placing onus qua adverse possession upon the plaintiff being a defendant in the counter claim was framed, therefore, there

is an abdication. Khasra girdawaris Ex.P1 to Ex.P8 showed the long and settled possession as the defendants had the knowledge which was not only to the defendants but to the entire world, therefore, the ingredients as per the provisions of Article 65 of the Limitation Act, had been proved to the hilt. Even otherwise, the defendants had lost the right and title in the property as per the provisions of Section 27 of the Limitation Act. In the absence of such plea and counter claim, judgments and decrees of the Courts below are liable to be set aside/modified vis-a-vis claim of possession.

Per contra, Mr. S.K.Singla, learned counsel appearing on behalf of the respondents submitted that appellant-plaintiff did not take the specific stand in the replication/written statement qua counter claim, therefore, cannot be permitted to raise plea of extinguishment of right for the first time in this Court. No such application was moved for amendment of the written statement at the appellate stage. The concurrent findings of facts and law cannot be interfered until and unless there is gross illegality and perversity which is conspicuously absent.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Jain.

It would be apt to reproduce specific pleadings set up in the written statement by the defendants/counter claimant as well as reply thereto by the plaintiff:-

Written statement-cum-counter claim

“1. That defendant no.1 to 7 and their LRs claiming decree

for possession of land mentioning in head note of plaint and requisite court fee of Rs.5/- is fixed. The replying defendant no.1 to 7 are entitled for decree of possession because possession of the plaintiff is unauthorised and no right has been vested to plaintiff by way of adverse possession.

2. That the defendant no.8 to 10 are entitled for special cost for Rs.2,000/- because the suit is false and frivolous against the defendants.

It is, therefore, prayed that the suit of the plaintiff be dismissed with costs.”

Replication-cum-written statement

“ 1. That para no.1 is wrong. The defendants have lost all titled and thus, cannot claim possession from the plaintiff.

2. That para no.2 is wrong. Defendants No.8 to 10 are impleaded as they were threatened possession of the plaintiff.

It is therefore prayed that the suit be decreed.”

Issue with regard to setting up title by way of adverse possession in affirmative came to be debated in the judgment cited (supra), wherein while interpreting the provisions of Article 65 and Section 27 of Limitation Act, it was held that plaintiff cannot set up the plea of adverse possession in affirmative. A strong emphasis has been laid by Mr. Jain with regard to injunction, for, possession undisputedly had been with the plaintiff.

I am afraid the aforementioned argument of Mr. Jain, is not sustainable, for, appellant-plaintiff has failed to take up the plea of adverse possession in the written statement vis-a-vis counter claim. Nor any such issue with regard to placing onus upon the defendants was framed. Though strong emphasis has been laid with regard to extinguishment of right or title of the defendants but no such plea had been taken in the written statement, therefore, aforementioned plea is hereby rejected.

As an upshot of my findings, I am of the view that the judgments and decrees of the Courts below do not suffer from any illegality and perversity, much less do call for any interference enabling this Court to form the different opinion than the one arrived at. No substantial question of law arises for adjudication of the present appeal.

The interim stay granted by this Court is hereby vacated.

The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

July 25, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No