

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

**RSA No.3964 of 2000 (O&M)
Date of decision:01.08.2018**

Ran Singh and others

... Appellants

Vs.

Kabootar (deceased) through LR's and others

... Respondents

RSA No.5572 of 2003 (O&M)

Ran Singh and others

... Appellants

Vs.

Apollo Land and Housing Company Limited

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Praduman Yadav, Advocate
for the appellants.

Mr. Sudhir Aggarwal, Advocate
for respondents No.1 to 4 in RSA No.3964 of 2000.

AMIT RAWAL J.

This order of mine shall dispose of two Regular Second Appeals bearing Nos.3964 of 2000 titled as “Ran Singh and others Vs. Kabootar (deceased) through LR's and others” arising out of dismissal of the civil suit No.1127 of 1981 titled as “Ran Singh and others Vs. Kabootar and another” (hereinafter called as “first suit”) claiming declaration and permanent injunction and RSA No. 5572 of 2003 titled as “Ran Singh and

others Vs. Apollo and Land and Housing Company Limited” arising out of adjudication of civil suit No.2053 of 1985 titled as “Apollo Land and Housing Company Limited Vs. Ran Sigh and others” (hereinafter called as “second suit”).

The facts and point involved in the present appeals are common, therefore, both the appeal are decided together.

In first suit, plaintiffs claimed declaration to the effect that they were in possession of the suit land bearing khewat no.59, khatoni no.194, khasra no.500 measuring 3 bighas 8 biswas situated within the revenue estate of village Nathupur, Tehsil and District Gurgaon for more than 25 years, though the defendants in the jamabandi reflected as owners of suit land. In fact, defendants never asserted the right of ownership and therefore, it had extinguished. In the year 1955-56, the defendants asked Puran Singh to give possession of the suit land but the same was refused by denying the title. The defendants were requested many times to admit the claim of the plaintiffs, but when they refused, cause of action arose to file the suit.

Defendant No.1 contested the suit by raising numerous preliminary objections. On merit, it was denied that plaintiffs were not in possession of the suit land for the last 25 years. In fact, it was averred that defendants had been in possession of the suit land as owners.

Defendant No.2-Apollo Land and Housing Company Limited filed a separate written statement stating therein that possession of the suit land was owned by Kabootar Singh (since deceased). The plaintiffs had never been in possession of the suit land. In fact, defendant no.2 had

purchased the area in dispute alongwith other area as per the registered sale deed dated 2.5.1984 from Kabootar Singh son of Jai Mal, for a valuable consideration of ₹6,34,218/- and had been in actual and physical possession of the suit land.

Since the parties were at variance, the trial Court framed the following issues in RSA No.3964 of 2000:-

“1. Whether the plaintiffs have become owner of the property by way of adverse possession?OPP

2. Whether the plaintiffs have no locus standi to file the present suit?OPD

3. Whether the plaintiffs are estopped from filing the present suit by their act, conduct acquisition?OPD”

Vide order dated 05./12.1996, following issues were framed:-

“1-A Whether the plaintiffs have distorted the real and true facts and obtained the relief of mis-representation as averred in para no.3 of the preliminary objection of written statement?If so to what effect.”

Vide order dated 21.4.1997, another following issues were also framed:-

“2-A Whether the defendant had purchased the area in dispute vide sale deed dated 2.5.1984 and registered on 11.5.1984 as alleged? If so to what effect?OPD

2-B Whether the defendant is in possession of the suit land?OPD”

Defendant no.2, in the first suit, was the plaintiff in the second suit claimed injunction against the plaintiffs, in the first suit, arraying them as defendants on the premise that on payment of valuable consideration, vide sale deed dated 02.05.1984, had become the owner of the suit land and had been in possession. Since the defendants were extending threats for forcible dispossession, sought injunction against Ran Singh and others being defendants. The defendants, in the second suit, and plaintiffs in the first suit, had taken the same stand as pleaded in first suit.

The trial Court on the basis of aforementioned pleadings, framed the following issues in RSA No.5572 of 2003:-

- “1. Whether the plaintiff is in possession of the suit land as has been alleged in the plaint?*
- 2. Whether the impugned decree dated 24.9.1985 in favour of the defendants is illegal, nullity void, abinitio and not binding upon the rights of the plaintiff as alleged in the plaint?OPP*
- 3. Whether the plaintiff is not a bonafide purchaser for consideration if so its effect?*
- 4. Whether the suit is barred by principles of resjudicata as alleged in the written statement?*
- 5. Whether the suit is not maintainable in the present form?*
- 6. Whether the plaintiff is estopped from filing the present*

suit by its act and conduct?OPD

7. *Whether the plaintiff has concealed the material facts?OPD*

8. *Relief.”*

Both the parties led evidence in respect of their pleadings. First suit was dismissed by the trial Court and judgment and decree of the trial Court was affirmed by the Lower Appellate Court, whereas, second suit was dismissed by the trial Court. The appeal preferred by the plaintiffs before the Lower Appellate Court was allowed. Hence the present Regular Second Appeals.

Mr. Praduman Yadav, learned counsel appearing on behalf of the appellants in support of the grounds of appeal submitted that both the Courts below have abdicated in not granting the declaration and ownership as the suit was primarily not based upon the adverse possession, i.e., as per the provisions of Article 65 of the Limitation Act but provisions of Section 27 of the aforementioned Act, claiming the extinguishment of right of title in the suit land by the defendants, therefore, the suit could not have been dismissed being not maintainable.

The plaintiff has been able to prove the possession of the suit land through documentary evidence, mutation bearing No.213, Ex.P11. Jamabandi since 1956 also established the possession. On the other hand, defendants failed to place on record any material to establish the possession. Report of the Local Commissioner was neither here nor there, much less the demarcation report, Ex.D9. The Courts below ought to have protected

the possession of the plaintiff by injuncting the defendants noticing that the plea of adverse possession was not sustainable in the eyes of law, thus, injunction in favour of the plaintiff in second suit and defendant no.2 in first suit is fallacious, erroneous and liable to be set aside.

Per contra, Mr. Sudhir Aggarwal, learned counsel appearing on behalf of respondents No.1 to 4 in RSA No.3964 of 2000 submitted that suit claiming ownership by way of declaration on the basis of adverse possession was not maintainable in view of the law laid down by Hon'ble the Supreme Court in **Gurudwara Sahib Vs. Gram Panchayat village Sirthala and another 2013(4) RCR (Civil) 703**. The appellants in first suit had not been able to prove the possession from the year 1957 by implying that on demise of Puran Singh, the entire possession had been of the defendants and after sale deed, that of defendant no.2. The stray entry of mutation was mistake on the part of the revenue authorities, for, mutation does not confer any title and thus, urged this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Praduman and the appeals are liable to be dismissed.

It is settled law that suit claiming ownership by way of declaration by taking the aid of Article 65 and Section 27 of the Limitation Act is not maintainable. For the sake of brevity, para 7 of Gurudwara

Sahib's case (supra) 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 plaintiff in the first suit and defendants in the second suit miserably failed to challenge the sale deed dated 02.05.1984 executed by Kabootar Singh (since deceased) in favour of defendant no.2. It has been established on record that possession of the suit land was surrendered to plaintiff in second suit and defendant no.2 in first suit. Rapat roznamcha dated 15.10.1984 in this regard was also recorded. The sale deed has also been proved on record. The Local Commissioner's report has also proved the possession of plaintiff in second suit and of defendant no.2 in first suit as development of road laying water pipes and electricity poles had been proved.

All these factors weighed in the mind of the Lower Appellate Court to grant the injunction in favour of the plaintiff in second suit. The concurrent findings of facts and law cannot be interfered until and unless

there is gross illegality and perversity, much less no substantial question of law arises for adjudication of the present appeals.

No other argument has been raised.

Resultantly, the appeals stand dismissed.

(AMIT RAWAL)
JUDGE

August 01, 2018
savita

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