

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.550 of 2002 (O&M)

Date of Order: 08th January, 2018

Laik Ram and others

..Appellants

Versus

Jai Narain and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikram Punia, Advocate,
for the applicants/appellants.

Mr. V.K.Jain, Sr. Advocate, with
Mr. Ravi Kadian, Advocate,
for respondent nos.1, 3, 9, 10, 13 to 16 and 18 to 23.

Mr. D.R.Singla, DAG, Haryana.

ANIL KSHETARPAL, J.

C.M.No.15701-C-2017 &
C.M.No.15006-C-2017

Both these miscellaneous applications shall be considered
while deciding the main case.

MAIN

Defendants-appellants are in regular second appeal against the
concurrent findings of fact arrived at by the Courts below.

In the considered opinion of this Court, following substantial
questions of law arise for consideration in the present case:-

- (i) Whether the Civil Court has a power to mould the relief
under Order 7 Rule 7 read with Section 151 CPC so as to
do substantial justice between the parties by playing a
pro-active role?

- (ii) Whether the trial Court and the first appellate Court have misdirected while deciding the suit and the first appeal or not?
- (iii) Whether a suit for declaration filed by the plaintiffs claiming that they have perfected their title by way of adverse possession is maintainable or not?
- (iv) Whether plaintiffs who have indulged in continuous litigation in one Court/revenue authorities or the other can thereafter claim that they have perfected their title by way of adverse possession while including the period spent in the litigation or not?

FACTS

Plaintiff and defendants are owners of certain land in village Bindhrauli, which was subject matter of consolidation of holdings under The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'the Act of 1948') in the year 1970-71. As per the plaint, after preparation of the scheme of consolidation of holdings, proceedings for re-partition took place on 25.02.1971. Certain land previously owned by the plaintiff was allotted to the defendants, whereas certain land previously owned by the defendants was allotted to the plaintiff. Plaintiff filed objections, which were dismissed by the Assistant Director, Consolidation of Holdings exercising the powers of Settlement Officer on 19.09.1975. Appeal against the same was dismissed on 24.07.1976 while making slight change. Further petition under Section 42 of the Act of 1948 was decided by the Additional Director Consolidation of Holdings, Haryana, exercising the powers of the Government, vide order

dated 12.05.1977 again allowing some changes. It is not in dispute that the order passed by the Additional Director Consolidation of Holdings dated 12.05.1977 has become final between the parties.

During the course of hearing of the present appeal, a status report was asked from the office of the Director General Consolidation of Holdings and affidavits have been filed, stating that Rattan Singh son of Khubi Ram(predecessor of the plaintiffs) was delivered possession on 15.06.1971, whereas possession of the land allotted to Sh. Amar Singh son of Mohar Singh was delivered on 16.06.1971. However, thereafter, proceedings for sanction of the mutation were initiated and following events took place:-

“4. That the consolidation of the Village Bindhroli was finalised in 1971 and the record was submitted to the Revenue Department on 02.03.1973. As per the Register of Proceedings of Consolidation, possession of the land allotted to Sh. Rattan Singh son of Sh. Khubi was given on 15.06.1971. Similarly, the possession of land allotted to Sh. Amar Singh son of Mohar Singh was handed over on 16.06.1971. Further, in pursuance of the decisions passed by the Consolidation Authorities, mutations for the said lands allotted to Sh. Rattan Singh and Sh. Amar Singh, amongst others, was sanctioned as under:-

Sr.No.	Mutation No.	Date of Sanction of Mutation	Order of sanction of mutation
1	1225	08.03.1989 (Mutation cancelled vide order dated 16.01.1992 of Collector, Sonipat to the extent of shares of Rattan Singh and Amar Singh	Order dated 19.09.1975 passed by Assistant Director Consolidation.
2	1227	08.03.1989 (Mutation cancelled by Tehsildar, Sonipat on 14.03.2012)	Order dated 24.07.1976 passed by Assistant Director Consolidation.
3	1228	08/03/89	Order dated 12.05.1977 passed by Additional Director, Consolidation

<i>Sr.No.</i>	<i>Mutation No.</i>	<i>Date of Sanction of Mutation</i>	<i>Order of sanction of mutation</i>
4	1310	08/08/94	Order of Collector, HCS dated 16.01.1992 in case no.42/SDO/Sonipat.

Defendant-appellant Amar Singh through his son filed an application for delivery of possession in accordance with the final order of Director Consolidation on 11.04.1989. A notice dated 12.04.1989 was issued by the Consolidation Officer calling upon the plaintiff to deliver possession and if he has any objection submit the objections within a period of 15 days.

Plaintiff initially filed a suit (previous) on 09.05.1989 claiming that he has perfected his title by way of adverse possession. During the pendency of the aforesaid suit, present suit was filed on 17.11.1989. Previous suit was withdrawn. The only claim made by the plaintiff is that he has perfected his title by way of adverse possession as final order passed by the Director Consolidation on 12.05.1977 has not been implemented for a continuous period of 12 years and hence he is owner by way of adverse possession. It was further claimed by the plaintiff that the notice issued by the Consolidation Officer is without jurisdiction as the application has not been filed by Amar Singh, the defendant-appellant but through his son Laik Ram and the procedure as prescribed under Rule 10 of the The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (hereinafter referred to as 'the Rules of 1949') (as applicable to Haryana) has not been followed.

Learned trial Court decreed the suit on the following two grounds:-

- (i) The notice issued by the Consolidation Officer dated

12.04.1989 is illegal as the application for delivery of possession was filed by son Laik Ram and not by Amar Singh and the procedure as prescribed under Rule 10 of the Rules of 1949 has not been followed.

- (ii) Plaintiff has perfected his title by way of adverse possession as the possession of the plaintiff became adverse from 12.05.1977 i.e. the date when final order in the consolidation proceedings was passed and hence become owners.

First appeal filed by the defendants-appellants was dismissed by the first appellate Court for the similar reasons.

Now let us consider the questions of law.

QUESTION NOS. (ii), (iii) & (iv)

Both the Courts have declared that the plaintiffs to have perfected their title by way of adverse possession. A look at the pleadings would prove that the plaintiffs are only asserting that the order of consolidation authorities has not been implemented continuously for the period of 12 years and hence they have perfected their title by way of adverse possession. Plaintiffs have not pleaded as to from which date and from what time their possession became adverse. It is not in dispute that the plaintiffs were original owners of the land in dispute. In consolidation of holdings, defendants were allotted this land. As per the affidavit, filed by the Consolidation authorities, for the first time mutation was sanctioned on 08.03.1989, which was subsequently cancelled. It is further stated in the affidavit that pursuant to the consolidation of holdings possession was delivered to the respective parties in June, 1971. Thereafter, in appeal and

proceedings under Section 42 of the Act of 1948, there was slight modification in the order. This being the position, plaintiffs have failed to plead and prove that from which date or time, their possession became adverse to the defendants. A non implementation of an order passed by a competent authority, cannot be interpreted to hold that the possession of a particular person has become adverse, who has continued in possession due to non implementation of the order. At the most, the plaintiffs continued in possession due to non implementation of the order passed by the competent authority. Further, the Courts have overlooked the fact that the consolidation of holdings was implemented and possession was delivered to the parties in June, 1971. Thereafter, objections were filed, decided. Appeal preferred, decided. Petition under Section 42 of the Act of 1948 filed and decided. These proceedings continued upto the year 1977. Thereafter, mutation proceedings again continued for long time. Such being the position, plaintiffs-petitioners were not entitled to claim that their possession was continuously hostile to the defendants.

Both the Courts have further committed a material irregularity in returning a finding that the application filed by Laik Ram son of Amar Singh on behalf of his father was not legal. It is not in dispute that Amar Singh was ill and died during the pendency of the suit in the year 1992. Laik Ram had filed an application on behalf of his father. Such application could not be held to have been filed by a incompetent person.

Further, the courts below have totally misread the notice issued by the Consolidation Officer dated 12.04.1989. The Consolidation Officer, Rohtak, has issued notice to the plaintiffs for vacating the possession within a period of 15 days, which has been allotted to the defendants and in case

they have any objection, the same be submitted to the office within the aforesaid period only. Rule 10 of the Rules of 1949, is extracted as under:-

“10.EVICTION:--The Consolidation Officer shall serve a notice on the person or persons liable to eviction under sub-section (2) of Section 23 requiring him within fifteen days of the receipt of the notice to vacate the land. If such notice is not complied with within the time specified therein, the Consolidation Officer may exercise the powers of a Revenue officer under the Punjab Land Revenue Act, 1887, for the purpose and putting in physical possession of the holding the person entitled thereto.

Notice issued was in accordance with Rule 10 of the Rules of 1949. Plaintiffs were given 15 days notice to vacate the land. Notice was not for immediately handing over the possession of the land. 15 days time was given to the plaintiffs to hand over possession. Hence, the findings of the Courts that 15 days time was not given to hand over vacant possession is result of misreading of the notice dated 12.04.1989.

Further the suit filed by the plaintiff is for declaration that he has become owner of the suit property by way of adverse possession which is not maintainable in view of judgment passed by the Hon'ble Supreme Court of India in the case of Gurudwara Sahib v. Gram Panchayat, Sirthala (2014) 1 SCC 669.

In view thereof, questions no.(ii), (iii) and (iv) are answered in favour of the defendants-appellants.

QUESTION NOS.(i) & (v)

Learned counsel for the respondents-plaintiffs has vehemently argued that at the most appeal filed by the defendants-appellants could be accepted, however, no direction can be issued to the Consolidation Officer to deliver possession. Learned counsel for the respondents has filed C.M.No.15701-C-2017 to the effect that while exercising powers under Section 100 CPC, the Court cannot exercise powers under Articles 226/227 of the Constitution of India. The learned senior counsel has further taken objection to the fact that status report from the Consolidation authorities has been asked by this court, which does not fall within the scope of 100 CPC.

I have considered the submission of learned senior counsel for the respondents-plaintiffs. However, I do not find any substance therein.

Courts have been established to do substantive justice between the parties. The appellate Courts have been given powers to re-hear the matter and decide the same in accordance with law. In case of any doubt on a factual position, the Courts have the power to clear its doubt by calling the report from the competent authorities. In the present case, a final order was passed by the Consolidation authorities, validity whereof is not being challenged by any of the parties. Such final order has, however, not been implemented. The Civil Court under Order 7 Rule 7 read with Section 151 CPC has a power to mould the relief in the peculiar facts of the case. The Courts are duty bound to grant appropriate relief to do substantial justice between the parties. Such relief cannot be restricted only to the plaintiffs. Such relief can always be granted to any of the parties to the litigation. Civil Court always retains the powers to grant general or other relief so long as it is in the nature of ancillary relief and not inconsistent with the case set up by the parties and is based upon same cause of action.

Learned counsel for the respondents-plaintiffs has drawn attention of the Court to the judgment of this Court reported as **Lal Singh and others v. The State of Punjab and others, 1970, Punjab Law Journal, 291**, to contend that Consolidation Officer has power to order delivery of possession only within a period of three years from the date the final order was passed by the Consolidation authorities.

In the considered opinion of this court, this judgment does not deal with the power of the Civil Court. In the present case, now the matter is pending before the Civil Court.

Still further, in the present case in fact possession had been delivered to the respective parties in June, 1971 and due to modification of the order in appeal and revision and on account of illegal re-entry in possession by the plaintiffs, the possession is liable to be restored back, which was not the position in the **Lal Singh's case** (supra). The authorities are bound to implement their order which has become final between the parties.

Hence, questions no.(i) and (v) are also answered in favour of the defendants-appellants.

In view of the discussions made above, the judgments and decrees passed by both the Courts below are set aside. The suit filed by the plaintiffs is ordered to be dismissed while accepting the present appeal.

The Consolidation Officer is directed to give effect to the consolidation of holdings finally modified by order dated 12.05.1977.

C.M.No.15006-C-2017

This is an application for leading additional evidence so as to produce on record two “Aksh Shajras” (lay out plans).

Plaintiffs-respondents wants to submit that the Consolidation of Holdings as ordered would be inequitable by producing copies of two “*Aksh Shajras*” (*lay out plans*). However, such application cannot be allowed at this stage particularly when it was not the case of the plaintiffs before the Courts below. Plaintiffs had not laid any foundation to challenge the Consolidation proceedings. The suit filed by the plaintiffs was only on two grounds; (i) having perfected the title by way of adverse possession and (ii) proceedings for delivery of possession were erroneous. The additional evidence sought to be produced is clearly beyond pleadings and the evidence led by the plaintiffs-respondents.

Hence, the application is dismissed.

08th January, 2018
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(ANIL KSHETARPAL)
JUDGE

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