

RSA No.447 of 2004 (O&M)

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

RSA No.447 of 2004 (O&M)

Date of decision : 14.09.2018

Bhagwantpal Singh (deceased) through LRs

... Appellant

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. K.V.S. Kang, Advocate
for the appellant.

Ms. Anu Pal, DAG, Punjab.

AMIT RAWAL, J.

The appellant-plaintiff has assailed the judgment and decree of the lower Appellate Court, whereby the suit of the plaintiff for possession of the land comprised in khewat/khatoni No.702/1146, Khasra Nos.116/26/2/215 situated at Warrachian Road, Samana, Tehsil Samana, District Patiala, decreed by the trial Court, has been dismissed.

Succinctly, the facts which emanate from the pleadings of the parties are that the appellant-plaintiff instituted the suit on the premise that he is owner of land to the extent of 108 ½/260th share. The defendants unauthorizedly constructed a Veterinary Hospital without any title nor any compensation in this regard, had been paid. A legal notice dated 09.11.2000 was served upon the defendants to vacate the premises, but having fallen on deaf ear, the suit, aforementioned, was filed on 20.05.2003.

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The defendants contested the suit being barred by efflux of time as they had become owner by way of adverse possession. On merit, it was stated that vide letter dated 09.07.1981 written by the Municipal Committee, Samana, the land, in dispute, was donated by the father of the plaintiff, Inder Singh, in the year 1958-59 for construction of Civil Veterinary Hospital. The building was constructed by the Municipal Committee with the financial aid of the Punjab Government.

The plaintiff filed replication controverted the objections raised by the defendants.

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

1. Whether the plaintiff is the owner of the suit land? OPP
2. If issue No.1 is proved whether the plaintiff is entitled to the decree for possession of the suit land? OPP
3. Whether the suit as framed is not maintainable? OPD
4. Whether the suit is within time? OPP
5. Relief.

The plaintiff in support of the aforementioned case, examined himself as PW-1 and brought on record various documents including Ex.P8 to Ex.P-13, jamabandis, to establish the ownership of the suit property. On the other hand, the defendants examined Dr. Rajinder Kumar Goyal as DW-1 and Jagdish Chand as DW-2 and brought on record the various documents including utilization certificate to show that aid granted by the Punjab Government was utilized.

The trial Court on the basis of the oral and documentary evidence, much less, pleadings, decreed the suit. The defendants preferred an appeal before the lower Appellate Court, which has been accepted by

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holding that the defendants had become owner of the suit property by way of adverse possession. The genesis of the aforementioned judgment had been with regard to the utilization certificate i.e. Ex.D2, D4, D5 and letter dated 09.07.1981 (Ex.DW2/A), besides, Ex.D1 and Ex.D3.

Mr. Ashish Aggarwal, learned Senior Counsel assisted by Mr. K.V.S. Kang, learned counsel appearing on behalf of the appellant-plaintiff submitted that the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law. No doubt the provisions of the Limitation Act enable the defendants to set up a plea of adverse possession, because as per Article 65 of the Limitation Act viz-a-viz the private party within twelve years and that of the State thirty years, but such a plea taken by the Department of the State Government has been held to be bad in law in view of the *ratio decidendi* culled out by the Hon'ble Supreme Court in **"State of Haryana V/s Mukesh Kumar and others" 2011 (10) SCC 404, 2012 (1) RCR (Civil) 17.**

It was next contended that the State Government cannot be permitted to grab the property of their own citizen in the manner as has been set up in defence. Similar view has been expressed in the judgment rendered by the Hon'ble Supreme Court in **"Hemaji Waghaji Jat V/s Bhikhabhai Khengarbhai Harijan and others" 2009 (16) SCC 517, 2008 (4) RCR (Civil) 401.** The defendants had not pleaded the necessary particulars claiming the title by way of adverse possession i.e. i) date on which, they had come into possession; ii) nature of the possession; iii) whether the factum of the possession was known to the other party or whole world; iv) period of the possession; v) possession was open and undisturbed.

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In support of the aforementioned contentions, attention of this Court was drawn to the revenue record i.e. jamabandi (Ex.P8) to establish ownership, whereby the appellant has been shown to be owner of the property bearing Khewat/Khatoni No.702/1146, Khasra No.116/26/2/2/15. As per Ex.P8, Punjab Government, is owner of a land adjoining to the suit land and had unauthorizedly encroached the entire land of the plaintiff. DW2-Jagdish Chand, witness of the Municipal Committee, denied that the property was ever gifted by the father of the appellant-plaintiff.

During the course of the pleadings, an application for production of document to place on record the alleged gift deed was submitted on behalf of the plaintiff, but no such document despite reply had been placed on record. Ex.PA proved the total land holding of the defendants as 23 kanals 18 marals. The defendants have not be able to establish that the possession of the land, in dispute, is in their ownership by placing on record any demarcation report, thus, urges this Court for setting aside the judgment and decree of the lower Appellate Court.

The attention of this Court was also drawn to the order dated 08.04.2015, whereby during the course of motion hearing of the aforementioned appeal, argument was raised that the Veterinary Hospital had been shifted from the suit land, elsewhere and State of Punjab was directed to file an affidavit as to whether any other Veterinary Hospital had come upon the land other than the suit land. It was also made clear that the affidavit should contain the photographs. An affidavit, in this regard, had been filed, wherein, it was stated that new building of Tehsil level Civil Veterinary Hospital was under construction as per the standard design and site plan (Annexure R-2), but no residential quarters were being constructed

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at the suit land.

An application for stay of the construction was filed and this Court, vide order dated 02.12.2015, stayed the further construction. That order continued and thereafter, it was mentioned that the appeal was admitted and ordered to be listed as per list. Even an effort was made to arrive amicable settlement, but such effort did not culminate into a compromise.

Per contra, Ms. Anu Pal, DAG, Punjab, submitted that the plaintiff has miserably failed to discharge the onus, even if there was no evidence on behalf of the defendant. In other words, it was submitted that the plaintiff has to stand to his own legs. The plaintiff has not been able to prove the title in the suit property and therefore, cannot succeed claiming the possession. In support of the aforementioned contentions, reliance was laid to the judgment passed by the Hon'ble Supreme Court in **“Union of India and others V/s Vasavi Co-op, Housing Society Ltd. and others” 2014 (2) RCR (Civil) 76, 2014 (2) SCC 269.**

It was next contended that the defendants had become owner by extinguishment of right as per the provisions of Section 27 of the Limitation Act, thus, urged this Court for dismissal of the present regular second appeal.

This Court while admitting the appeal on 29.11.2004 framed the following substantial questions of law:-

- 1. Whether the learned lower appellate court could reverse the finding recorded by the trial court without giving any reasons to differ with such findings and especially when issues No.3 and 4 were not pressed by the defendant-respondents before*

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the trial Court?

2. *Whether the plea of adverse possession could be entertained by the learned lower appellate court without there being any pleadings or evidence in this regard.*
3. *Whether the finding of the learned lower appellate court are perverse and based on no evidence and therefore, liable to be reversed.*
4. *Whether the respondent-defendants could raise plea of adverse possession and pleading permissible possession on the basis of gift deed?*

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that there is force and merit in the submissions of Mr. Ashish Aggarwal.

There is no dispute to the *ratio decidendi* culled out in para No.15 of the judgment cited at bar by the counsel for the State. For the sake of brevity, para No.15 of the same reads thus:-

"15. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. We are of the view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited."

The aforementioned *ratio decidendi* would not be applicable in the instant case on account of two reasons, i) Setting up a plea of adverse possession tantamounts to admitting the title of the opposite party; and ii)

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Ex.P8 to Ex.P13 i.e. jamabandis, clearly established the ownership of the plaintiff over the suit property.

The defendants have also not pleaded the basic ingredients, as noticed above, for the purpose of claiming title by way of adverse possession nor in such circumstances, any evidence has been led. Even if, the evidence has been led, the same would have been beyond the pleadings. There is not a whisper in the written statement with regard to the date of possession, date of knowledge to the whole world, duration of the possession, much less, *animus possidendi*.

Hon'ble the Supreme Court in **State of Haryana's case (supra)**, came heavily down on the stand taken by the State as in the aforementioned judgment, illegal possession was with the Police Department and after noticing the historical background of the concept of adverse possession, which was born in England around 1275, it was held that a person pleading adverse possession has no equities and it tantamounts to admitting the right of a true owner. The right to property is not only a constitutional/statutory right, but also a human right, which has already been conceived in realm of individual right such as right to health, right to livelihood, right to shelter and employment etc. The Government should protect the property of a citizen, but cannot be permitted to grab it. In para 50, it was held that no Government Department, Public Undertaking, much less, the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizen in the manner as has been noticed above. For seeking interim stay, an application was filed accompanied by the photographs. The photographs showed that during the pendency of the regular second appeal,

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an attempt was made to raise construction on the vacant land as Veterinary Hospital allegedly averred by the defendants is very old and dilapidated condition. The photographs are the testimony of the same, which have not been rebutted vide affidavit dated 12.05.2015 of the then Director, Animal Husbandry and the cognizance of the same, therefore, has been taken by this Court. The lower Appellate Court has not noticed the aforementioned position of law and documentary evidence, therefore, in my view, committed a gross illegality and perversity in upsetting the well-reasoned judgment and decree of the trial Court. The defendants have not been able to prove pleaded case with regard to the gift deed as witness of the Municipal Committee, DW2-Jagdish Chand, admitted that there was no such gift nor any copy of gift deed has seen the light of the day.

The above-said substantial questions of law are answered in favour of the appellant-plaintiff.

Keeping in view the aforementioned facts and circumstances, the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law and the same is hereby set aside and that of trial Court is restored. The present regular second appeal is allowed.

14.09.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**