

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.2160 of 2010 (O&M)

Date of Decision: May 11, 2018

Harminder Pal

...Appellant

Versus

Gurmel Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Bhupender Singh, Advocate for
Mr.P.K.Gupta, Advocate,
for the appellant.

Ms.Jagriti Kalra, Advocate for
Ms.Harveen Kaur, Advocate,
for respondent Nos.2 & 4 to 10.

AMIT RAWAL, J.

Appellant-plaintiff is in Regular Second Appeal against the concurrent findings of fact and law, whereby the suit claiming ownership with regard to suit property measuring 80 kanals 6 marlas, fully described in the head note of the plaint having become owner for the last more than 12 years, has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

Mr.Bhupender Singh, learned counsel appearing on behalf of the appellant-plaintiff submitted that the Courts below have erroneously dismissed the suit as the appellant-plaintiff had been able to prove the continuous, hostile and peaceful possession. The jamabandies Ex.P7 to Ex.P12 and khasra girdawaries Ex.P13 to Ex.P16 proved the long and settled possession. All these factors have not been adverted to and, therefore, there is illegality and perversity.

The challenge was also laid to the sale deed dated 1.10.1981 registered on 28.12.1981 and sale deeds dated 21.11.1983 and 1.2.1984 executed by Harkishan Pal to be illegal, null and void. The Courts fell in error in ignoring the entries in the revenue record, which duly proved the name of Pritam Dass predecessor-in-interest of the appellant, who had become owner of the property by way of adverse possession, therefore, there is illegality and perversity.

Ms.Jagriti Kalia, Advocate for Mr.Harveen Kaur, Advocate, appearing on behalf of respondent-defendant Nos.2 and 4 to 10 submitted that the suit for claiming title on the basis of adverse possession is not available as plaintiff has not claimed the relief as per the provisions of Section 27 of the Limitation Act by alleging that the plaintiffs had extinguished the right and title in the property. In support of her contention, relied upon the ratio decidendi culled out in **Prem Singh & Ors. Versus Birbal & Ors., 2006 (3) R.C.R. (Civil) 381** and, thus, urged this Court for affirming the findings.

On plain and simple reading of the suit, the appellant-plaintiff claimed ownership of the property on the basis of adverse possession, which, in view of the ratio decidendi culled out in the judgment cited supra, cannot be taken. For the sake of brevity, relevant Paras 11, 12 and 20 of the judgment read thus:-

“11. Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the limitation Act, 1963 which provides that at the determination of the period prescribed thereby, limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

12. An extinction of right, as contemplated by the provisions of the Limitation Act, prima facie would be attracted in all types of suits. The Schedule appended to the Limitation Act, as prescribed by the Articles, provides that upon lapse of the prescribed period, the institution of a suit will be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out is raised by the defendant or not, in the event a suit is found to be barred by limitation, every suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed.

20. If the plaintiff is in possession of a property, he may file a suit for declaration that the deed is not binding upon him but if he is not in possession thereof, even under a void transaction, the right by way of adverse possession may be claimed. Thus, it is not correct to contend that the provisions of the Limitation Act would have no application at all in the event the transaction is held to be void.”

The appellant-plaintiff had not taken up the provisions of Section 27 of the Limitation Act, which read as under:-

“Extinguishment of right to property.-At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”

From the plain and simple reading of the aforementioned provisions, it is evidentially clear that the relief claimed in the plaint was not as per the provisions of Section 27 of the Act.

The plea of adverse possession can always be taken as defence but not in the affirmative. The aforementioned view of mine is derived from the unreported judgment rendered in **Regular Second Appeal No.3963 of 2008 (Municipal Committee, Ratia, District Fatehabad Versus Gurmeet**

Singh), decided on 3.8.2016.

For the reasons stated above, the concurrent findings arrived at by the Courts below do not call for any interference. The argument of the learned counsel for the appellant-plaintiff is not able to bring the case within the realm of perversity to enable me to form a different opinion that the one arrived at.

Resultantly, the appeal is dismissed.

May 11, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No