

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

RSA No.4384 of 2012(O&M)
Date of decision: 10.05.2018

M/s Bhaskar Refractories & S.W. Pipers Pvt. Ltd.

... Appellant

Versus

Surender Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Adarsh Jain, Advocate for the appellant.
Mr. Shiv Kumar, Advocate for respondents No.1 & 2.

ARUN PALLI, J. (Oral)

In a suit filed by the appellant-plaintiff, it prayed for a declaration that it had become the owner in possession, by way of adverse possession, of the suit property i.e. a land measuring 1 kanal 12 marlas, comprised in khasra No.26, situated within the revenue estate of village Sarai Khawaja forming part of the industrial premises of the plaintiff situated at 20/ KM Mathura road, Faridabad. And defendants No.1 & 2, who had purchased the suit property from defendants No.3 & 4, pursuant to a registered sale deed dated 29.08.2005, had no right, title or interest therein.

As despite numerous opportunities granted, including the last opportunity, the plaintiff failed to lead any evidence in support of its claim, its evidence was closed by order. Likewise, even the defendants failed to

adduce any evidence as regards the issue the onus of proof was upon them. Resultantly, the trial Court dismissed the suit under Order 17 Rule 3 of the Code of Civil Procedure. As even the appeal preferred against the said decree failed and was dismissed vide impugned judgment dated 30.07.2012, the appellant/plaintiff is in Regular Second Appeal.

Before I proceed further, it would be apposite to refer to the conclusion arrived at by the appellate Court, which reads thus:

“12. Before proceeding further, it is pertinent to mention here that suit was filed way back on 20.9.2005 and plaintiff has sought the declaration that sale deed dated 29.8.2005 pertaining to the suit land executed by defendants no.3 and 4 in favour of defendants no.1 and 2 be declared illegal, null and void and plaintiff be declared to be owner in possession over the suit land. Once such serious rights are involved in the litigation, it cannot be presumed that the person who has filed the suit will take the same casually. A duty is cast on the person who comes to court that he should do every effort like leading evidence etc. for final adjudication of matter. Perusal of zimini orders reveal that after the filing of the suit in the year 2005 issues were framed on 23.2.2011 i.e. after about six years. In between the suit remained pending and on various occasions adjournment was sought for compromise. It is pertinent to mention here that after 22.8.2007 till 6.5.2010 more or less case was continuously adjourned for awaiting compromise. Even same was the position after the framing of issues as

endeavor of the plaintiff was not to lead evidence rather to seek adjournment on the ground of compromise.

Can adjournments be sought indefinitely in the guise of awaiting compromise and not to lead evidence by plaintiff is the point for determination to decide this appeal.

13. When after the filing of suit on 20.9.2005. issues were framed on 23.2.2011, during the intervening period of approximately six years if compromise had not taken place between the parties, after framing of issues plaintiff should have led its evidence to prove its pleadings. On 23.2.2011 the case was adjourned to 17.3.2011 and on that day no evidence of plaintiff was present rather on the likelihood of compromise adjournment was sought. On 17.3.2011 it was made clear by the learned trial court that if on the next date of hearing i.e. 1.4.2011 compromise would not be effected the evidence be led by the plaintiff. However, on 1.4.2011 matter was adjourned to 19.5.2011. Thereafter, on 19.5.2011 and subsequent date i.e. on 4.6.2011 no evidence was led by the plaintiff rather on the joint plea for compromise the adjournment was sought. On 4.6.2011 learned trial court made it clear to plaintiff that already sufficient opportunities for compromise have been availed and the matter pertained to the year 2005 accordingly last opportunity was granted to lead evidence on 22.7.2011.

14. Again on 22.7.2011 no evidence of the plaintiff was present. Though on said date adjournment was sought

on the ground that counsel for plaintiff was away as his mother was in hospital, however that could have been a genuine ground for non-examination of witnesses had they been present. Perusal of the zimini order dated 22.7.2011 reveals that no PW was present even on that date. Had the PWs been present, it could have been presumed that plaintiff was serious to lead evidence but due to absence of his counsel the evidence could not be led. However, learned trial court again granted one more last opportunity to lead evidence on 10.8.2011. But on 10.8.2011 adjournment was sought for plaintiff on the ground that the brief of the plaintiff has been taken away by mistake by somebody. It is pertinent to mention here that even on 10.8.2011 no PW was present. Even if, the brief of the counsel was taken by somebody due to mistake even then the present of witnesses could have been got marked to show that plaintiff was sincere to lead evidence, accordingly on said date no further adjournment was granted and impugned judgment passed dismissing the suit.

15. From the discussion made above at least one aspect is clear that right from the beginning i.e. institution of the suit, plaintiff was not interested to take it to its logical end. It is strange that throughout endeavor of both the sides was to seek adjournments in the guise of compromise as if some friendly match was going on between them, as mentioned in para no.12 for three years adjournments were

taken to compromise the matter. Had the plaintiff been serious it should have brought the evidence if not at the first available opportunity then definitely on the subsequent occasions when the case was adjourned. Prior to closing of evidence by court order two last opportunities were granted to plaintiff to conclude its evidence. As discussed earlier plaintiff did not lead any evidence despite it was cautioned by granting last opportunity with costs. Never any witness of the plaintiff came present on 17.3.2011, 1.4.2011, 22.7.2011 and 10.8.2011. Moreover, never any list of witnesses to be examined was furnished by the plaintiff.”

Ex facie, the matter at hands is one of those rarest of rare cases, wherein the plaintiff was not only remiss or negligent, but indeed disinclined, to pursue its own cause. Thus, in the given situation, the trial Court was choice-less but to dismiss his suit. On being pointedly asked, learned counsel for the plaintiff could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality. Even otherwise, as indicated above, the plaintiff claimed title/ownership in the suit property by way of adverse possession. Needless to assert that such a plea could only be set up in defence by the defendants, and therefore the suit filed by the plaintiff claiming title by prescription or adverse possession was wholly misconceived.

Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

10.05.2018
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO