

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

**(1) RSA No.4579 of 2012 (O&M)
Date of Order:19th April, 2018**

Sarbir Singh(Satbir Singh) and others

..Appellants

Versus

Chander and others

..Respondents

(2) RSA No.1045 of 2013 (O&M)

Sahib Kaur and others

...Appellants

Versus

Chander and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Deepak Thapar, Advocate,
for the appellants (in RSA No.4579 of 2012)**

**Mr. Jagjot Singh, Advocate, for
Mr. Kunal Dawar, Advocate,
for the appellants (in RSA No.1045 of 2013)**

**Mr. Sanjay Vashisth, Advocate,
for respondent Nos.1, 3, 4 and 6.**

ANIL KSHETARPAL, J.

This regular second appeal is filed by defendants-appellants against the concurrent findings of fact arrived at by the courts below.

This judgment shall disposed of Regular Second Appeal No.4579 of 2012 and Regular Second Appeal No.1045 of 2013, arising out of the same suit passed by the learned trial court and the learned first appellate court.

It is not in dispute that there was a previous litigation between

the parties when predecessor-in-interest of the appellants-defendants filed a suit for possession against the predecessor-in-interest of the plaintiffs-respondents. In the previous suit, which was decided on 23.08.1976, the suit filed by the predecessor-in-interest of the defendants-appellants for possession was dismissed after recording a finding that the suit filed by the plaintiffs in that suit and predecessor-in-interest of the defendants-appellants herein was barred by time and the defendants have become owners by adverse possession. The relevant finding of the court in a previous inter-parties suit is extracted as under:-

“It is also well settled law that the adverse possession begins when one becomes entitled to the possession of the land. In the present case the defendants became entitled to the land left by Risala on 4.3.60 at the latest, and as such adverse possession of the defendants on the suit land started on this very date, against the plaintiffs. The plaintiffs have filed the present suit on 4.10.73. It is thus clearly not within 12 years from the date when the possession of the defendants became adverse. Hence it is held that the suit of the plaintiffs is not within time and as such this issue is decided against the plaintiffs and in favour of the defendants.”

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“In the present case the defendants have been in actual possession of the suit land openly and continuously in the assertion of their title to it after the death of Risala. At the latest the death of Risala can be deemed as 4.3.60.

It means even if that date is taken as the date on which the possession of the defendants became adverse, the defendants have still become owners of the suit land by adverse possession.”

It is not in dispute that the aforesaid finding has become final between the parties.

Plaintiffs-respondents filed the present suit on 27.08.2001, seeking declaration that they are owners in possession of the suit land and the entries in the revenue record recording the defendants-appellants to be owners are wrong and the plaintiffs-respondents are entitled to get their names incorporated in the column of ownership of the revenue record.

Both the courts after appreciating the evidence available on the file, have decreed the suit filed by the plaintiffs.

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the appellants has submitted as under:-

- (i) that a suit for declaration to the effect that the plaintiff has become owners by way of adverse possession is not maintainable as per the judgment passed by the Hon'ble Supreme Court reported as **Gurudwara Sahib v. Gram Panchayat Village Sirthala and another, (2014) 1 SCC 669.**
- (ii) that the first appellate court has committed an error in dismissing the appeal also on the ground that late Smt. Chandro who was arrayed as one of the appellant had not

thumb marked the memorandum of appeal.

On the other hand, learned counsel for the respondents has pointed out that the plaintiffs had been declared to be owner of the property in question in the previous litigation. He has pointed out that prayer for declaration was not necessary, however, he has pointed out that the entries in the revenue record are to be corrected and such suit is not barred.

No doubt, as per the judgment of the Hon'ble Supreme Court in the case of Gurudwara Sahib (supra) and followed by Division Bench of this Court in *Vijay Bhawar and others v. Ajaib Singh (deceased) through his LR, 2015(3) RCR(Civil), 604*, a suit for declaration that the plaintiffs have become owners by adverse possession would not be maintainable.

However, as submitted by learned counsel for the respondents-plaintiffs, the prayer for declaration that the plaintiffs are owners in possession was not required in view of the findings arrived at between the parties, in the previous litigation.

Now the issue which requires determination is whether a suit for declaration would be maintainable on behalf of a person who consider himself aggrieved by an entry in the record of rights or in an annual record?

Section 45 of the Punjab Land Revenue Act, 1887 enables a party aggrieved of an entry in a record of rights to file a suit. Section 45 of the Act is extracted as under:-

45. Suit for declaratory decree by persons, aggrieved by an entry in a record: -

If any person considers himself aggrieved as to any right of which he is in the possession by an entry in a record-of-rights or in an annual record, he may institute a suit

for a declaration of his right under Chapter VI of the Specific Relief Act, 1877.

A reading of the aforesaid, it is clear that the suit filed by a person aggrieved of the entry in the revenue record is maintainable before the civil court.

Still further as per Section 34 of the Specific Relief Act, any person entitled to any legal character or to any right as to any property may institute a suit. Section 34 of the Act is extracted as under:-

34. Discretion of court as to declaration of status or right

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

PROVIDED *that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.*

In the present case, plaintiffs-respondents were held to have become owner by way of adverse possession in previous litigation which has become final between the parties. In such situation, plaintiffs were entitled to get the entries in the record of rights corrected. In terms of Section 45 of the Punjab Land Revenue Act, 1887, suit filed by the plaintiff aggrieved of an entry in the record of rights or in an annual record shall be maintainable.

Second argument of learned counsel is that late Smt. Chandro, one of the defendant had died but she was inadvertently added as the appellant.

In the considered opinion of this court, the appeal filed before the first appellate court has not been dismissed on the ground of

maintainability. The appeal could be filed by some of the defendants and reversal of the entire judgment could be sought by some of the defendants. Such being the position, the case of the appellants is not adversely affected on this count.

In view of the aforesaid discussion, this court does not find any good ground to interfere with the concurrents findings of fact arrived at by the courts below.

However, as conceded by learned counsel for the respondents-plaintiffs, the prayer for declaration that the plaintiffs have become owners is superfluous. However, the second prayer made in the suit is found to be maintainable and the same has been correctly decreed by both the courts below.

With these observations, both the appeals are disposed of.

C.M.No.2772-C-2013

Allowed as prayed for.

C.M.No.2773-C-2013

Prayer in this application is for condonation of delay of 99 days in re-filing the appeal.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 99 days in re-filing the appeal is condoned.

Application is allowed.

C.M.No.2774-C-2013

Prayer in this application is for condonation of delay of 197 days in filing the appeal.

Since the judgment has been passed on merits, therefore, no further order is required to be passed.

C.M.No.2775-C-2013

Prayer in this application is for bringing on record the legal representatives of Smt. Chandro.

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed, subject to all just exceptions. The legal representatives mentioned in paragraph 5 of the application are brought on record for the purpose of prosecuting this appeal only.

Office to carry out necessary corrections in the memorandum of parties.

19th April, 2018
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(ANIL KSHETARPAL)
JUDGE

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