

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

RSA No.2956 of 2013

Date of decision:- 29.01.2018

Banarsi Dass Saini and Another

...Appellants

Versus

Ajmer Singh and Others

...Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Bhag Singh, Advocate,
for the appellants.

Mr. Himanshu Sharma, Advocate,
for respondents No.1 to 8.

Mr. Ram Kumar Saini, Advocate,
for respondent No.9.

RITU BAHRI J. (Oral)

The present appeal has been filed by the appellants against the judgment dated 31.01.2013 passed by the Additional District Judge, Ambala and judgment dated 27.09.2010 passed by the trial Court, Ambala whereby the suit of the plaintiffs/appellants has been dismissed by both the courts below.

Brief facts of the case are that, plaintiffs are joint owners of land measuring 23 Kanals 12 marlas including in Khasra No. 51/1 and 51/2 measuring 14 marlas as per jamabandi for the year 1996-97 and mutation No.392 dated 11.08.1998. The defendant No.1 remained Sarpanch for a period of 15 years and has been acting as head of Saini Community and after him, he managed to get elected Ram Ji Lal and then Baldev Singh as Sarpanch and now Sh. Dalip Singh is the Sarpanch of the village. The plaintiffs have been opposing defendant No.1 in all his elections and so he had a grudge against them and in order to take revenge, the defendant No.1,

in connivance with defendant Nos. 2 to 5 have got Khasra Girdawri wrongly entered in favour of Saini Community qua a portion measuring 4 Marlas of Khasra No. 51/2 min.(east) though there was no such saini Dharamshala on the said land which remained in possession of the plaintiff only. Defendants, in connivance with each other, have got constructed a Dharamshala for backward class on the portion of Khasra No. 51/2, whereas, the backward classes are residing in the western side of the village. The plaintiffs enquired from Halqa Patwari and came to know that the Dharamshala has been constructed on the land owned by the plaintiffs whereas, they were under the impression that the said land belongs to the Panchayat, though the plaintiffs have installed a Toka Machine and Khunta of cattles etc there. When the plaintiffs came to know about it, they approached the defendants to get the portion of Khasra No.51/2 vacated (showed as ABCD) but the defendants started threatening to encroach upon the remaining portion also (shown as ABCFE) which is in possession of the plaintiffs. Hence the present suit has been filed before the Trial Court.

Upon notice, defendant Nos.1 to 5 appeared and filed their joint written statement taking preliminary; locus standi etc. Defendants denied that defendant No.1 managed to get Ramji Lal elected as Sarpanch because he was elected by the villagers in the election process itself. It has been stated that the plaintiff and defendants have common ancestors and about 3 bighas of land was purchased for the settlement of their families and they jointly constructed a Choupal measuring 4 marlas which was used commonly. Further during the tenure of Baldev Singh as Sarpanch, the said Choupal was constructed by the Government under the Scheme Sarkar Apke Dwar and amount of Rs.1,25,000/- was sanctioned. However, the

plaintiffs destroyed the boundary wall of the said Choupal and filed the present suit. It has been further stated that the said Dharamshala was constructed with grant given by the sated Government and the plaintiffs have no concern with that property. Rest of the averments have been denied and the dismissal of the suit has been prayed for. Replication was filed by the plaintiff denying the allegations contained in the written statement.

From the pleading of the parties, following issues were framed:

1. Whether the plaintiff is entitled to a possession as prayed for?OPP.
2. If issue No.1 is decided in favour of the plaintiff,whether he is entitled to consequential relief of permanent injunction as prayed for?OPP
3. whether the suit of the plaintiff is not maintainable in the present form?OPD
4. Whether the suit of the plaintiff is time barred?OPD.
5. Whether the plaintiff has no locus standi to file the suit ?OPD.
6. Relief.

On the basis of evidence produced by the plaintiffs as well as defendant, both the trial court dismissed the appeal of the plaintiffs. Appeal against the said judgment also met the same fate.

Feeling dissatisfied with the findings of the trial court, appellant filed the appeal before the lower appellate court which was also dismissed vide judgement dated 31.01.2013.

After going through the impugned judgment, it is apparent that Dharamshala existed in the suit land since the year 1961 and the Dharamshala was constructed pucca with the Haryana Government grant of Rs.1,25,000/- during the tenure of Baldev Singh Sarpanch more than 12 years before the

filing of the suit. Under Article 65 of the Limitation Act, 1963 the period of limitation for filing suit for possession of immovable property or any interest therein based on title is 12 years from the date of possession of the defendant became adverse to the plaintiff. Hence, the suit land was in possession of the defendants for more than 12 years, and their possession was open, notorious and hostile to the plaintiffs clearly ousted the plaintiffs/appellants and asserted their ownership to the exclusion of the plaintiffs. All the essential ingredients for acquisition of ownership by adverse possession are satisfied and after the expiry of period of limitation of 12 years for recovering of possession has rightly been dismissed by both the courts below.

Consequently, the appellants are not entitled to the relief of possession of the suit land and permanent injunction as prayed for and the appellants have no locus standi and cause of action to file the present suit which is not maintainable in the present form and is hopelessly time barred.

Hence, No illegality, much less perversity has been pointed out in the judgments of the lower courts below, warranting interference by this Court.

No substantial question of law arises for consideration in this appeal.

Hence, appeal stands dismissed.

29.01.2018

Riya Grover

(RITU BAHRI)

JUDGE

Whether speaking/reasoned Yes
Whether reportable No