

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2789 of 2016 (O&M)

Date of Decision : 16.04.2018

Ram Saroop and others

....Appellants

Versus

Lakhmi Chand and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. L.M. Gulati, Advocate
for the appellants.

Surinder Gupta, J.

This is appeal against concurrent judgments of Courts below dismissing the suit of plaintiffs for possession by partition of the share of plaintiffs-appellants in the land measuring 7 *kanals* 11 *marlas* situated in the revenue state of village Attail *Tehsil* Ganaur District Sonapat, as fully described in the headnote of plaint. (In later part of the judgment, parties will be referred as 'plaintiffs' and 'defendants' as per civil suit).

2. As per case of plaintiffs, suit land was jointly owned by plaintiffs and defendants, which was ancestral property of parties in which plaintiffs no. 1 and 2 were owners of 1/4th share and legal representatives of plaintiffs no. 3 to 6 were having 1/2 share. Remaining 1/8th share was owned by defendants no. 3 and 4 and 1/8th share was owned by defendant no. 5. Earlier plaintiffs no. 1 and 2 and forefathers of plaintiffs were residing in village Attail from where they shifted to Jind and Panipat and defendants are living in village Attail and Ganaur. Taking benefit of absence of plaintiffs, defendants constructed boundary wall over the suit property without their consent with intention to grab the share of plaintiffs in the suit land. The request of plaintiffs not to raise construction over the suit land

and partition the share of plaintiffs in it was not cared for by the defendants, hence this suit.

3. Defendants admitted that the suit land was jointly owned and possessed by predecessors of parties but alleged that in the year 1952, father of plaintiffs no. 1 and 3 started living separately in other village Atawala @ Tola, *Tehsil* and District Panipat and grandfather of remaining plaintiffs shifted to village Pega *Tehsil* Alwa District Jind. They sold their share in the suit land to father of defendants in the year 1950. As the sale was within family, no sale deed was executed but an entry to this effect was made in the *bahi* of father of defendants. Possession of the entire suit land was handed over by predecessor-in-interest of plaintiffs to father of defendants at the time of execution of *bahi* entry recorded on 01.10.1950. From that day onward, father of defendants had been cultivating the suit land as owner. Defendants have also taken alternate plea that in the event of sale in favour of father of defendants being discarded, the possession of defendants over the suit land was peaceful, continuous, without interruption and with the knowledge of plaintiffs, without payment of rent, as such, they have attained title of the suit land by way of adverse possession.

4. Courts below admitted that the land in dispute was owned by predecessor-in-interest of plaintiffs and defendants. The plea of defendants that predecessor-in-interest of plaintiffs have sold their share vide *bahi* entry dated 01.10.1950 was discarded on the ground that no sale of immovable property worth more than ₹100/- is permissible without a registered sale deed. However, the plea of defendants that they have attained the title over the suit land by way of adverse possession was accepted.

5. Learned counsel for plaintiffs-appellants has argued that both

the Courts below have not looked into this aspect that parties to the suit were co-sharer and once *bahi* entry is discarded, defendants could not claim adverse possession against plaintiffs, who were co-sharer in the suit land.

6. It is a case where defendants are claiming adverse possession against co-sharers. They are relying on *bahi* entry vide which predecessor-in-interest of plaintiffs relinquished their right in favour of father of defendants and from that day onward possession of predecessor-in-interest of defendants and thereafter defendants became adverse against plaintiffs. Even if *bahi* entry dated 01.10.1950 is not admissible as a document of transfer of title of immovable property but with all force this document operates as estoppel against plaintiffs and their predecessor-in-interest, who have relinquished their share in the suit property after accepting the sale consideration and possession of defendants from that day onward was not as co-sharer but based on writing dated 01.10.1950 and adverse against plaintiffs and the predecessors-in-interest.

7. I agree with learned counsel for appellants that possession of a co-sharer howsoever long it may be does not operate as adverse possession against other co-sharer(s) until and unless a co-sharer in possession proves on record that he had attained adverse possession by his conduct. Admittedly, plaintiffs and their family have shifted from village Attail in the year 1952. Neither plaintiffs nor their predecessor-in-interest challenged the *bahi* entry or took care of the fact that defendants have taken possession of entire suit land under this writing and also raised construction over it. Findings recorded by Courts below that defendants have become owner of the suit land by way of adverse possession are based on the plea of defendants, evidence and facts proved on record and call for no interference

in this second appeal. It is not disputed that possession of defendants and their predecessor-in-interest over the suit land vide *bahi* entry dated 01.10.1950 was continuous, uninterrupted, peaceful, hostile and to the knowledge of plaintiffs. It is also admitted fact that predecessor-in-interest of plaintiffs have purchased the land in Jind and other villages while shifting from village Attail and permanently settled there. The fact that they have not bothered to claim any share in the suit property for a period of about 55 years shows that predecessor-in-interest of plaintiffs were fully aware that they have relinquished their right in the suit property and plaintiffs have also reconciled that defendants have become owner of the suit land with efflux of time.

8. I find no legal or factual infirmity in judgments passed by both the Courts below. No substantial question of law requiring determination arises in this appeal, which has no merit and the same is dismissed.

April 16, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No