IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.5508 of 2016 (O&M)
Date of decision: 10.07.2018

Gurdial Singh. ….. Appellant

Versus

State of Punjab and others. ….. Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Raj Kumar Kakkar, Advocate for the appellant.

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B.S. Walia, J. (Oral)

[1] Both the Courts below dismissed the suit filed by the appellant/plaintiff wherein prayer was for a declaration that he was owner in possession of land measuring 24 kanals comprised of Khasra No.67 (24-0), Hadbast No.221 situated in village Nasira Khilchi, Tehsil and District Ferozepur, besides, for permanent injunction for restraining defendants/ respondent Nos.1 and 2 from executing and implementing order dated 16.04.2012 passed by the Deputy Commissioner, Ferozepur exercising the powers of the Commissioner under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 with consequential relief of permanent injunction restraining the defendants/respondents from interfering in the peaceful possession of the plaintiff/appellant over the suit land and from dispossessing the plaintiff/appellant from the suit land.

[2] The case as set up by the appellant before the learned Trial Court was that his father was in possession of the suit land which was owned

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by the Provincial Government since a number of years and after his death, the plaintiff/appellant had come into possession i.e. almost 17 years prior to the filing of the suit and that defendant/respondent No.2 had filed an application under Sections 4 and 5 of the aforementioned Act for eviction of the plaintiff but the same was dismissed by the Collector vide order dated 22.07.2010 (Ex.P-4). However, the Deputy Commissioner, Ferozepur exercising the powers of the Commissioner, Ferozepur allowed the appeal filed by the State vide order Ex.P1 dated 16.04.2012.

[3] Order (Ex.P1), recorded that the plaintiff/appellant was not disputing the ownership of the State Government and was prepared to take the property in question on lease on such terms and conditions as were deemed appropriate by the State Government. It was further observed that control of the property in question was with the Irrigation Department, Government of Punjab and that the appellant had filed the civil suit based on adverse possession.

[4] The civil suit was dismissed by the learned trial Court by on the ground that the State Government had sought eviction of the plaintiff/appellant from the property in question in the year 2004, therefore, it could not be said that the plaintiff/appellant was in authorized possession of the said property and neither could possession be treated as uninterrupted, that although, the order passed by the Collector (Ex.P4) was in favour of the appellant, yet the same was reversed by the Deputy Commissioner, Ferozepur exercising the powers of the Commissioner vide order dated 16.04.2012 and the appellant/plaintiff was ordered to be evicted from the property in question. The learned Trial Court also relied upon the cross-examination of the plaintiff/appellant and observed that the land in question had never been allotted to him or his predecessor by the provincial

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Government. The learned Trial Court observed that the mere fact that the name of the plaintiff/appellant was recorded in the column of cultivation in the Jamabandi would not in itself confer a right on the plaintiff/appellant to seek relief of declaration on the ground of adverse possession as the plea of adverse possession could be taken only in defence and relief of declaration on the basis of adverse possession could not be granted in terms of Article 65 of the Limitation Act. Reliance was placed on the decision of this Court in **2007 (2) RCR (Civil) 213** in case titled as **Kanak Ram & ors vs Chanan Singh & ors** as well as **2012 (2) Civil Court Cases 616 (P&H)** in case titled as **Nachattar Singh & ors vs Surjit Singh & ors**. The learned Trial Court also held that no injunction could be granted against the true owner i.e. defendants/respondent Nos.1 and 2.

[5] Appeal filed by the plaintiff/appellant was dismissed by the learned Additional District Judge, Ferozepur on the ground that plea of adverse possession could not have been taken up by filing a Civil Suit but only by way of a defence. The learned Lower Appellant Court held that the plaintiff/appellant had sought relief of declaration of being owner in possession on the basis of adverse possession but the said plea in itself was not tenable as said plea could be taken up only by way of defence and since the filing of the suit was not maintainable, the plaintiff/appellant could not be held entitled for the relief of declaration as prayed for.

[6] Learned counsel for the appellant has not been able to counter the finding of the Courts below based on Article 65 of the Act that the plea of adverse possession could be raised only by way of defence and relief could not be sought on the basis of adverse possession by filing a civil suit for a declaration.

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[7] In the circumstances, I am of the view that the findings recorded by the Courts below do not warrant any interference by this Court as no substantial question of law is involved. There is no merit in the appeal. Accordingly, the same is dismissed in limine.

(B.S. Walia)
Judge

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1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No

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