

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

**RSA No.5446 of 2015 (O&M)
Date of Decision.31.10.2018**

InderjitAppellant

Vs

Nasib Chand (now deceased) through LRs ...Respondent

2. RSA No.6272 of 2015 (O&M)

InderjitAppellant

Vs

Nasib Chand (now deceased) through LRs ...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Chetan Mittal, Senior Advocate with
Mr. R.S. Randhawa, Advocate and
Mr. Kunal Mulwani, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.15816-C of 2015 in RSA No.6272 of 2015

For the reasons stated in the application, delay of 8 days
in filing of the appeal is condoned.

Application is allowed.

C.M. No.15817-C of 2015 in RSA No.6272 of 2015

For the reasons stated in the application, delay of 86 days
in re-filing of the appeal is condoned.

Application is allowed.

Main cases

This order of mine shall dispose of two regular second
appeals arising out of civil suit and counter-claim whereby the
appellant-plaintiff had claimed ownership of the suit property by

setting out adverse possession and the defendant sought possession. The consistent stand of the appellant before the Courts below was that he had been in possession of the suit property by running brick kiln for the last more than 20 years, therefore, the defendant had extinguished right as per Section 27 of the Limitation Act and became owner by efflux of time.

The defendant as noticed above set up the counter-claim seeking possession on the basis of the ownership by way of oral exchange.

The trial Court on the basis of evidence dismissed the suit and decreed the counter claim of the defendant. The appeal laid before the lower Appellate Court was also dismissed.

Mr. Chetan Mittal, learned Senior Counsel assisted by Mr. R.S. Randhawa, Advocate and Mr. Kunal Mulwani, Advocate submitted that the defendant has not been able to prove title despite the fact that oral exchange is permissible in law. Since the defendant was a plaintiff in the counter-claim, heavy onus lied on him to prove the ownership. On the other hand, plaintiff had been running brick kiln for the last 25 years and bread and butter of the plaintiff and labour working on the brick kiln would be taken away in case decree of possession passed in the counter-claim is ordered to be maintained. Even he has given some offer for settlement.

I am afraid aforementioned arguments of Mr. Mittal are not sustainable, for, in suit claiming ownership by way of adverse possession, title of the opposite party i.e. the defendant is deemed to have been admitted. Had the defendant not set up the counter-claim,

perhaps there was some scope of granting injunction from forcible dispossession except in due course of law but in view of the claim sought in the plaint, such plea in view of the ratio decidendi culled out by Hon'ble Supreme Court in **Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and another (2014) 1 SCC 669** would not sustainable. Relevant paras 8 to 10 of the judgment *ibid* are extracted herein below:-

“8. There cannot be any quarrel to this extent that the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.

9. However, we also find from the reading of the judgment of the High Court that the High Court has refused the injunction observing that the appellant was not entitled to the same as it is the Gram Panchayat which is the owner of the property in dispute and as the appellant is in possession without any right, it has no right to seek injunction against the Gram Panchayat. This finding is totally perverse and, in fact, unnecessary. In the first instance, there was no occasion or reason for the appellant's counsel to seek this prayer in the second appeal. As pointed out above, the relief of injunction had

already been granted by the civil court and this portion of the decree had not been challenged by the respondents. Decree to this extent in favour of the appellant had attained finality. The first appellate court also specifically recorded this fact and observed that by not challenging the judgment and decree passed by the learned Civil Judge, the respondents accepted that the appellant was in adverse possession of the land since 13-4-1952. We, thus, clarify that observations of the High Court that the appellant is not entitled to injunction, were unnecessary and beyond the scope of the appeal.

10. As the appellant is in possession of the suit property since 13-4-1952 and has been granted the decree of injunction, it obviously means that the possession of the appellant cannot be disturbed except by due process of law. We make it clear that though the suit of the appellant seeking relief of declaration has been dismissed, in case the respondents file suit for possession and/or ejectment of the appellant, it would be open to the appellant to plead in defence that the appellant had become the owner of property by adverse possession. Needless to mention at this stage, the appellant shall also be at liberty to plead that findings of Issue 1 to the effect that the appellant is in possession of adverse possession since 13-4-1952 operates as res

judicata. Subject to this clarification, the appeal is dismissed.”

Simplicitor plea of adverse possession of having acquired ownership by efflux of time would not be sufficient in the absence of specific pleading as per Section 27 of the Limitation Act. Section 27 of the Limitation Act reads as under:-

“27. Extinguishment of right to property.—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

In the absence of such pleadings, in my view, the appellant-plaintiff cannot derive the benefit of Order dated 06.03.2017 passed in SLP No.30598 of 2014 titled as “*Gurucharan Singh since (D) through LRs and others Vs. Gurdev Singh since deceased through LRs*” whereby in some different case, matter has been remitted to this Court to determine question with regard to maintainability of the suit.

As an upshot of my finding, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, both the second appeals are dismissed.

(AMIT RAWAL)
JUDGE

October 31, 2018
Pankaj*

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No