

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-6876-2016 (O&M)

Date of Decision: 15.5.2018

Subhash Chander

....Appellant.

Versus

Smt. Jasleen Ravi Inder Singh and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

PRESENT: Mr. B.R. Vohra, Advocate for the appellant.

AJAY KUMAR MITTAL, ACJ.

1. Having lost before the Courts below, the appellant-plaintiff No.3 has approached this Court by way of instant Regular Second Appeal challenging the judgment and decree dated 17.8.2016 passed by the District Judge, Sonipat, affirming that of the Civil Judge (Junior Division), Sonipat, whereby the suit of the plaintiffs for declaration with consequential relief of permanent injunction, was dismissed.

2. The facts necessary for the disposal of the present appeal are that the plaintiffs filed a suit for declaration with consequential relief of permanent injunction alleging that their father Shri Vishwa Nath was in possession of the property as detailed and described in para 1 of the plaint. It was further alleged that the disputed property forming part of the house was in abandoned condition in the year 1960 and the father of the plaintiffs

had started living there along with family. The house in question was in a dilapidated condition and, therefore, the father of the plaintiffs had reconstructed it in the year 1975 after getting the site plan sanctioned from the Municipal Committee, Sonipat. It was further alleged that from the time of their father, the plaintiffs were continuing in actual physical possession of the disputed property and their possession over the property in question was more than 50 years. According to the plaintiffs, they had become owner of the suit property by way of adverse possession and the defendants had no right, title or interest over the same. The said suit was contested by the defendants by filing a joint written statement and raising various preliminary objections. It was pleaded therein that the possession of the plaintiffs over the suit property was as of tenants and that the husband of defendant No.1 had let out the suit property to the father of the plaintiffs at the rate of ₹ 700/- per month, in addition to house tax and later on the said rent was enhanced. The other averments made in the plaint were denied and a prayer for dismissal of the suit was made.

3. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiffs have become absolute owners of the house (as detailed in para No.1 of the plaint) by way of adverse possession? OPP
2. If issue No.1 is proved, whether the plaintiffs are entitled for a decree of permanent injunction, as prayed for? OPP
3. Whether the suit is not maintainable in the present form? OPD

4. Whether the plaintiffs have no locus standi to file the present suit? OPD
5. Whether the plaintiffs have not come to the court with clean hands? OPD
6. Whether the plaintiffs have no cause of action to file the present suit? OPD
7. Relief.

4. On appreciation of the oral as well as documentary evidence led by the parties, the trial Court came to the conclusion that admittedly the plaintiffs had already been ejected from the house in question by the Rent Controller, Sonipat, therefore, they had no right, title or interest in the property in question. Accordingly, the trial Court vide judgment and decree dated 31.8.2013 dismissed the suit of the plaintiffs. Trial Court taking up issues No.1 and 2 together concluded that the same did not stand proved with the following findings:-

“9. After appreciating the rival contentions raised by learned counsel for both the parties and taking into consideration the evidence led on record and the facts and circumstances of the present case, I am of the considered view that it is the settled proposition of law that the plaintiff has to stand on his own legs and has to prove his own case and he cannot take advantage of the weakness of the defendants. Reliance has been placed on **Punjab Urban Planning and Development Authority Vs. M/s Shiv Saraswati Iron and Steel Re-rolling Mills 1998 (3) LJR 106**. In the instant case, firstly, in

para No.2 of the plaint, the plaintiffs have admitted that the said portion of the house was abandoned in the year 1960 and thus, their father started living in it along with his family. Thus, the status of the plaintiff in the said property is nothing but of just a trespasser. Secondly, the plaintiffs have admitted in para No.3 of the plaint that in the year 1975, when their father was making construction to renovate the said house, then one Devender Singh (predecessor-in-interest of the defendant) claimed himself as owner of the said house and had stopped the father of plaintiff from raising the construction. Upon this, the father of the plaintiffs asked him to show the proof of his ownership and thereby continued the construction work. However, the said Devender Singh never re-appeared and therefore, the family of plaintiff continued to live in the said house. Accordingly, when the claim of predecessor of defendants namely Devender Singh over the suit property has been admitted and no plea of the possession of plaintiffs being open, hostile and continues has been taken. Thus, the plea of adverse possession goes. Thirdly, as per law laid down in **Jeet Singh (since deceased) through LRs Vs. Moluu Ram (since deceased) through LRs 2010 (2) RCR (Civil) 650**, “a person in adverse possession cannot file a suit for declaration and the plea of adverse possession is available only as defence, which could only be used as

shield and not as sword.” Fourthly, no other proof or claim except the plea of adverse possession, over the suit property has been produced by the plaintiffs. Fifthly, since Devender Singh (predecessor-in-interest) had died in the year 1977, therefore, the deed of conveyance in respect of the said house/House No.58-R was issued by Collector, Sonapat in the names of his legal heirs and namely Ravinder Kaur widow, Ravi Inder Singh and Aminder Singh (sons) i.e. on 19.11.1982. Sixthly, Smt. Ravinder Kaur died on 11.12.1991 leaving behind Shri Ravi Inder Singh and Aminder Singh (both sons) as her only legal heirs. Sh. Aminder Singh also died on 28.12.1994 and after his death, his wife Smt. Surjit Kaur succeeded to his estate as his only legal heir as the couple had got no issue out of their wedlock. On 09.07.2002, Smt. Surjit Kaur also died, thus it was not only Shri Ravi Inder Singh, who was the only legal heir, left to inherit the estate of Sh. Devender Singh (father-in-law of defendant No.1). On 07.06.2003, Sh. Ravi Inder Singh also died leaving behind the present defendants as his only legal heirs. Thus, the legal right of defendants over the suit property is duly established. Seventhly, the pedigree table of the family of defendants has been given at Page No.7 (para No.1 of additional pleas) taken in the written statement. Eighthly, admittedly, the plaintiffs have already been ejected from the house in question

from the Court of Learned Rent Controller/ACJM, Sonapat. Ninthly, thus, the plaintiffs have no right, title or interest in the suit property against the true owner/defendants. Accordingly, issue Nos. 1 and 2 are not proved and are decided against the plaintiffs and in favour of the defendants.”

5. Feeling aggrieved, the plaintiffs filed an appeal and the lower appellate Court finding no illegality and infirmity in the findings of the trial Court, dismissed the appeal vide judgment and decree dated 17.8.2016. Hence, the present appeal claiming the following substantial questions of law:-

- “a) Whether the impugned decrees of two courts below suffer from perversity and deserve to be set aside?
- b) Whether this is a case of mis-reading and non-reading of material evidence led by the parties?
- c) Whether suit by plaintiff for declaration of ownership on the basis of adverse possession was maintainable?”

6. I have heard learned counsel for the appellant and have gone through the judgments and decrees with his assistance.

7. Learned counsel for the appellant has made an attempt to persuade this Court to re-appreciate the evidence led by the parties before the trial Court to differ with the opinion of the courts below which is not permissible in view of the provisions of Section 100 of the Code of Civil Procedure. The Courts below on appreciation of oral as well as

documentary evidence, *inter alia*, had recorded a concurrent finding of fact that the status of the plaintiffs on the suit property was that of a trespasser and a person in adverse possession cannot file a suit for declaration and the plea of adverse possession is available only as a defence. Further, the plaintiffs had already been ejected from the suit property by the court of Rent Controller/ACJM, Sonapat, therefore, they had no right, title or interest in the suit property against the defendants. It was concluded by the courts below that the plaintiffs had admitted the claim of the predecessor of the defendants over the suit property and no plea of open, hostile and adverse possession was ever taken, therefore, the present suit was not maintainable on merits as well. No misreading of evidence on record by the courts below had been shown by the learned counsel warranting interference by this Court in the regular second appeal.

8. No question of law, much less a substantial question of law arises in this appeal for consideration of this Court.

9. In view of the above, there is no merit in this appeal and the same is hereby dismissed. No costs.

May 15, 2018
gbs

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

Speaking/Reasoned

Yes

Whether Reportable

Yes