

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

**RSA-5949-2015(O&M)
Date of decision : 14.11.2018**

Balbir Singh and others Appellants

versus

Resham Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.D.Achint, Advocate for the appellants.

AMIT RAWAL, J. (ORAL)

CM-14850-C-2015

This is an application seeking condonation of delay of 73 days in re-filing the appeal.

For the reasons mentioned in the application, the delay of 73 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA-5949-2015

Appellant-defendants have not been successful in defending a suit claiming injunction and alternative relief of possession having failed to prove the ingredients of adverse possession.

Plaintiffs instituted the suit for possession. In the earlier round of litigation predecessor-in-interest of the defendants were granted injunction with regard to forcible dispossession except in due course of law.

It is in this manner the suit for possession was filed. The trial Court decreed

the suit and the Lower Appellate Court also affirmed the decree.

Mr.N.D.Achint, learned counsel appearing for the appellants submitted that the plaintiffs had not been able to belie the statement of the defendant with regard to the adverse possession which was in the knowledge of the entire world. The ingredients of hostility and animus possidendi were writ large. In fact, the plaintiff had lost the right of extinguishment as per the provisions of Section 27 of the Limitation Act. The possession had been since 1969 which has not been controverted in any manner.

I am afraid the aforementioned argument of learned counsel is not sustainable for, in order to claim the aforementioned relief there has to be a specific pleading with regard to the date, year and month of acquiring the ownership by way of adverse possession. The aforementioned view of mine is supported by ratio decidendi culled out in the case of **Ram Nagina Rai and another v. Deo Kumar Rai(deceased) by LRs and another, 2018(5) RCR(Civil) 398**, the relevant paras of which are reproduced hereunder:-

“12. Applying the test of nec vi, nec clam, nec precario i.e., 'without force, without secrecy, without permission' as an established test for finding adverse possession, we find that the defendants have not proved their possession to be adverse to that of the real owner inasmuch as they entered into possession as licensees to begin with and there is nothing on record to show as to when the permissive possession became adverse to the interest of the real owner. ‘Animus possidendi’ is one of the ingredients of adverse possession, and unless the person possessing the property has the requisite hostile animus, the period of prescription does not commence. Virtually, the defendants are required to prove the possession to be adequate in continuity, adequate in publicity and to adequately show that

their possession is adverse to that of the true owner. It must start with wrongful dispossession of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

The physical fact of exclusion, possession and animus possidendi to hold as owner, in exclusion to the actual owner, are the most important factors to prove adverse possession.

A person pleading adverse possession has no equities in his favour. Since he is trying to take away the rights of the true owner, it is for him to clearly plead and establish all the facts necessary to establish his adverse possession.

13. It is an established position of law that insofar as Articles 64 and 65 of the Limitation Act are concerned, once a party proves its title, the onus of proof would be on the other party to prove the claim of title by adverse possession. In this case, it is an admitted fact that the ownership of the said suit property rests with the plaintiffs. In this given scenario, it is our considered view that the defendants have not proved the onus of adverse possession against the plaintiffs.

14. This court in the case of Hemaji Waghaji vs. Bhikhabhai Khengarbhai and Ors., has opined that there is an urgent need for a fresh look regarding the law on adverse possession by observing thus:

"32. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

33. We fail to comprehend why the law should place premium on dishonesty by legitimising possession of a rank trespasser and compelling the owner to lose his possession only because of his inaction in taking back the

possession within limitation.

36. In our considered view, there is an urgent need of fresh look regarding the law on adverse possession. We recommend the Union of India to seriously consider and make suitable changes in the law of adverse possession.”

This aforementioned observation was reiterated by this Court in judgment of State of Haryana v. Mukesh Kumar, 2012(1) R.C.R.(Ci9vil) 17 : (2011) 10 SCC 404 wherein the Court observed that the law of adverse possession needs a re-look, holding the right to property to be a human right, in addition to a constitutional or a statutory right.

15. In light of the above observations of this Court, we find that there is no absolute requirement to deem the mere possession of the suit property by the defendants to amount to adverse possession over the suit property. This would be in clear violation of the basic rights of the actual owner of the property. There is nothing on record to show that the defendants’ permissive possession over the property became adverse to the interest of the real owner, at any point of time. On the contrary, the records reveal that the permissive possession of the defendants continued till the filing of the suit.

16. The defendants have relied upon certain paid tax receipts and khatian extracts. The Trial Court has, on facts, specifically found that these documents do not disclose the khatian and plot number, and even the tax receipts do not relate to the suit house. Also, the chaukidari receipts (A1 to A16) do not contain the khatian of the suit house. These receipts have been unfortunately believed to prove that the defendants are in adverse possession of the disputed land. Even assuming that those documents relate to the suit house, they, at the most, depict the possession of the defendants and not their adverse possession.”

same , therefore, cannot be permitted to protect their possession seeking the benefit of Article 65 of the Limitation Act. No ground for interference is made out. The appeal is devoid of any merit and is dismissed.

(AMIT RAWAL)
JUDGE

14.11.2018
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No