

RSA No.4013 of 2017 (O&M)

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

RSA No.4013 of 2017 (O&M)
Date of Decision: 10.01.2018

Sukhdev Singh and others

.....Appellants

versus

Mohinder Kaur and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Birender S. Rana, Sr. Advocate,
with Mr. Gagan Rana, Advocate, for the appellants.

RAMENDRA JAIN, J.

CM-10239-C of 2017

For the reasons mentioned in the application, same is allowed.

Delay of 32 days in re-filing the accompanying appeal is condoned.

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Unsuccessful defendants No.1 to 3 have approached this Court by way of present Regular Second Appeal assailing the judgment and decree of the First Appellate Court dated 21.02.2017 dismissing their appeal, thereby affirming the judgment and decree of the trial Court dated 25.03.2016 decreeing the suit of respondent No.1-plaintiff for possession of land measuring 4 kanals 6 marlas fully described in the head-note of the plaint.

Put pithily, respondent No.1-plaintiff Mohinder Kaur claiming herself to be owner in possession of the suit land situated at Village Bala

Chakk, Tehsil and District Tarn Taran, as per jamabandi for the year 1998-

99 on the basis of registered sale deed dated 30.07.1996, filed a suit for

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possession against the appellants-defendant on the ground that father of defendants No.1 to 3 and husband of defendant No.4 namely, late Ajaib Singh had illegally occupied the suit land without any right, title or interest whatsoever and after his death, the defendants occupy the same illegally.

Appellants, admitting themselves to be the offspring of late Ajaib Singh, contested the suit alleging that one Fauja Singh was in continuous and uninterrupted possession of the suit land as owner on the basis of revenue entries as “*Billa Lagan Bawaja Kabza Mukhalfana*” (adverse possession) since the year 1937-38. His adverse possession was continuous without any interruption, open and hostile to the knowledge of all and sundry including respondent No.1-plaintiff. Said Fauja Singh vide sale deed dated 21.04.1970 sold his rights over the suit land in a sale consideration of ₹ 8,000/- to their father Ajaib Singh and uncle Lachhman Singh and put them possession. After the death of Lachhman Singh on 16.12.1996, on the basis of 'will', his share also came to their father Ajaib Singh, therefore, he became owner of the entire suit property and continued in possession of the same as such.

Mother of the appellants as defendant No.4 did not opt to contest the suit, therefore, she was proceeded against *ex parte*.

After holding trial, suit of the plaintiff was decreed by the trial Court vide judgment and decree dated 25.03.2016 directing the appellants to vacate the suit property within two months from the date of decree.

Being aggrieved, appellants approached the First Appellate Court, but remained unsuccessful as their appeal too was dismissed vide judgment and decree dated 21.02.2017.

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pamayash (Ex.D11), tenancy over the suit land was allotted to Fauja Singh as “occupancy tenant” and after enactment of the Punjab Occupancy Tenant (Vesting of Proprietary Right) Act, 1952, Fauja Singh had become owner of the suit property, who handed over its possession to their father Ajaib Singh.

Both the Courts below failed to appreciate that according to the entries in jamabandi for the year 1963-64, Fauja Singh was in possession of the suit land without payment of any rent as in the column of rent he was shown as “*Billa Lagan Bawaja Kabza Mukhalfana*”, which means that Fauja Singh was tenant at will without payment of any rent or “*batai*”. His such possession over the suit property had ripened into his ownership and thereafter of their father as vendee being in continuous open and hostile to all and sundry, including respondent No.1-plaintiff from this angle too. Therefore, both the Courts below have wrongly and illegally decreed the claim of respondent No.1-plaintiff.

Having given considerable thought to the submissions made by learned counsel for the appellants, I find the instant appeal completely devoid of any merit for the reasons to follow.

The appellants have claimed their title over the suit property by way of adverse possession on stepping into the shoes of their father late Ajaib Singh, who had purchased the possessory rights over the same from Fauja Singh in the year 1970.

It is well-settled that to prove adverse possession, the appellants were required to prove the following three ingredients: -

- “(i) On which date they or their predecessor-in-interest, including Ajaib Singh came in possession of the suit land;

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- (ii) Their nature of possession; and
- (iii) Their alleged possession over the suit property was continuous, hostile and uninterrupted to the knowledge of all and sundry, including respondent No.1-plaintiff.”

However, appellants have failed to prove any of the above ingredients. Therefore, the trial Court has rightly held that non-user of the property by an owner for a long time does not affect his title. Appellants have claimed their ownership and possession over the suit property on the basis of revenue entries which are silent about knowledge of their possession to its true owner i.e. respondent No.1-plaintiff. The appellants have miserably failed to bring on record any such evidence on record that their possession over the suit land had ripened into adverse possession being in knowledge of respondent No.1-plaintiff. Even sale deed dated 21.04.1970 (Ex.D1) in favour of father of the appellants does not find mention that vendor Fauja Singh had ever claimed ownership over the suit land on the basis of adverse possession or his possession was known to its true owner.

Except the bald statement of the appellants and sale deed (Ex.D1) there is no iota of evidence on the record in support of the aforesaid assertion of the appellants. More-so, the appellants did not produce any record as to in what capacity they were in possession of the suit land. They did not produce any rent receipt showing their permissive possession under respondent No.1-plaintiff.

Revenue entries, on the basis of which they have set up their claim, are not authentic documents inasmuch as appellant-defendant Sukhdev Singh as DW1 categorically admitted that they had not got entered any mutation on the basis of sale deed (Ex.D1). In jamabandi (Ex.D17) for

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the year 1998-99 father of the appellants namely, Ajaib Singh was shown in the column of cultivation and prior to it there was not entry of mutation replacing his name in place of Fauja Singh, who was never declared as owner of the suit property by any competent authority.

There are concurrent findings against the appellants of both the Courts below. I have gone through the impugned judgments of both the Courts below and find no illegality or perversity in the same.

More-so no question of law muchless substantial arises for consideration in this appeal.

Resultantly, this appeal being devoid of any merit, is hereby dismissed.

January 10, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.