

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

**RSA No.4757 of 2017
Date of Decision: 12.03.2018**

Raja Ram

.....Appellant

Vs.

Mahender and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.Sunil Kumar Verma, Advocate, for the appellant.

RITU BAHRI, J. (ORAL)

The appellant has come up in appeal against the judgment of trial Court dated 24.08.2015 and learned appellate Court dated 30.08.2017 whereby, the suit filed by the plaintiffs Mahender and others for possession of vacant plot measuring 3 Marla comprised in Sq.No.173, Killa No.9/1/13, situated within village Dhotar has been decreed.

The plaintiffs Mahender and others filed a suit for possession of aforesaid plot on the ground that he was allottee under the beneficiary Government Scheme Indira Awas Yozna for schedule caste community inhabitants of village to Mohan Lal predecessor in interest of the plaintiff. After the death of Mohan Lal, mutation of plot was sanction in favour of plaintiffs. The plot of plaintiff was lying vacant as the construction could not be raised. It is alleged by the plaintiff that on 31.03.2011, the plaintiff No.1 and his wife visited the plot in question and found that the defendant was constructing a boundary wall over the plot of plaintiffs. The plaintiff No.1 and his wife raised objection. Defendant attacked the plaintiff No.1 and his

wife. They remained admitted in General Hospital, Sirsa. The matter was reported to the police. Defendant promised to vacate the plot in question, after demarcation of the plot. Accordingly, on 20.05.2011 revenue officials i.e. Field Kanungo and Halqa Patwari visited the spot and conducted demarcation of the same. It was found that defendant was in illegal and unauthorized possession of disputed plot. The plaintiffs against requested the defendant to vacate the plot, however, the defendant did not listen to the request of plaintiff. Hence, the suit was filed.

Upon notice, defendant appeared and filed written statement with preliminary objections s regarding maintainability of the suit, cause of action and locus-standi and concealment of material facts. It was submitted that the defendant was in possession of the plot in question since 12.04.1998 which is hostile, peaceful, continuous, without any interruption and to the knowledge of the plaintiffs and Mohan Lal, their predecessor in interest and prayed for dismissal of the suit. Thereafter, on the pleadings of the parties the trial Court had framed the issues.

On the issued No.1, both the Courts had returned to the findings in favour of plaintiff. In order to prove its claim, the plaintiffs proved the jamabandi for the year 2007-08 as Ex.P1 and copy of mutation No.2217 dated 25.05.2011 as Ex.P2 which was reflected the name of Mohan Lal, predecessor-in-interest as owner of plot. The case pleaded by the defendant-Raja Ram was that he was allotted plot No.163//5/6 (0-3) at entry No.382 in the said mutation No.1275. It is the claim of the defendant that he had purchased the plot from Om Parkash who had purchased the plot in question from one Sultan who was allotted the same by the then Gram Panchayat as

Sultan, the alleged previous allottee was allotted plot No.163//5/11 at Sr.No.386 in Ex.P3. Possessory rights in plot is stated to have been delivered by the defendant. The defendant has placed reliance upon Ex.D1 i.e. agreement to sale which was executed by Sultan in favour of Om Parkash regarding the plot bearing No.163/5/11. It is the case where the possession of the plots which were allotted by the Gram Panchayat under a beneficiary scheme is under dispute. It is admitted case of the parties that the position of possession of the allotted plots was not as per the revenue record. In the demarcation report Ex.P6/A it has come up that plot No.173//9/1/13 (disputed plot) was allotted to Mohan Lal, predecessor in interest of plaintiffs while the same was under the possession of defendant, Raja Ram. Hence, both the Courts had returned to the findings that Mohan Lal shown to be owner in the revenue record, the plot No.173//9/1/13 was shown to be in possession of Mohan Lal predecessor-in-interest of plaintiffs. On record, there was allotment/hibanama No.3557 dated 04.07.2011, executed by Gram Panchayat under Indira Vikas Yojna. In the said gift deed, it is specifically mentioned that the plot allotted to the beneficiaries could not be subjected to alienation or disposition for a period of 20 years from the date of allotment. The defendant has not refuted the conditions of the allotment. As such, if the claim of defendant is taken to be true, in that case also Sultan, the original allottee was not competent to alienate the plot No.163//5//11 to Om Parkash from whom the defendant has claimed to purchase possessory rights regarding the same. There is no evidence on record that plot No.173//9/1/13 was ever allotted to Sultan. Since, Sultan was not having any legal rights to make disposition qua the plot in question,

The defendant has taken a plead that he purchased possessory rights of the plot in question from Om Parkash who had purchased the same from Sultan, vide a written agreement. In the present case, the dispute is regarding plot No.173//9/1/13 and not regarding plot No.163//5/11 which was allotted to Sultan vide mutation No.1275 dated 10.07.1994 and regarding which agreement Ex.D1 was executed. Sultan and Om Parkash never remained in possession of the plot in dispute. Moreover, the defendant has admitted that the possession of the plot in question was taken mistakenly taking it to be plot No.163//5/6 (0-3). As such, the plea of adverse possession is falsified from evidence and pleading itself. Defendant was not having any knowledge about the true owner of the plot in question. Sultan and Om Parkash were never owners of the plot in question. The defendant had taken a plea of adverse possession. In response to this question, it is proved that his possession of the property has become adverse and this adverse possession has gone beyond a period of 12 years from the date of knowledge of the true owner. Mutation of inheritance No.2217 was entered in favour of the present plaintiffs on dated 26.04.2011. As such, the statutory period for the claim of adverse possession would commence from 26.04.2011 when the mutation of inheritance was entered in favour of plaintiffs in the revenue record. Statutory period of 12 years from the date of knowledge of adverse claim of defendant is not lapsed. Moreover, the plea of permissive possession and that of adverse possession are mutually destructive. It is settled proposition of law that long possession whatsoever long it may be, cannot be held to proof of hostile possession. If the person who is claiming to be in adverse possession is not sure as to who is true owner of the land of which he is in possession, the question of ownership by

way of adverse possession never arises. Hence, this issue also decided against the defendants.

Learned counsel for the appellant has not been able to show any evidence that plot in dispute i.e. bearing No. plot No.173//9/1/13 was ever allotted to the vendor of Raja Ram i.e. Om Parkash. Even as per agreement Ex.D1, plot No.163//5/11 sold by Om Parkash and hence, the possession of the suit has been rightly decreed for possession by both the Courts.

So in view of the above, the orders of the Courts below do not reflect any material irregularity or perversity which warranting interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

12.03.2018

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No