

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1724 of 1986 (O&M)

Date of Decision: January 8th, 2019

Banarsi Dass & others

...Appellants

Versus

Union of India & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. K.S.Boparai, Advocate,
for the appellants.

Mr. Sandeep Mann, AAG, Punjab,
for the State.

AMIT RAWAL, J.

CM No.14435-C of 2011

Prayer in the application is for impleading the legal heirs of
appellant No.2 Tara Chand, who is stated to have died on 02.02.2001.

Allowed subject to all just exceptions. The persons mentioned
in Para 2 of the application are impleaded as legal heirs of appellant No.2
for the purpose of prosecuting the present case only.

CM No.3952-C of 2013

The prayer in the application is for impleading the applicant as
respondent No.6 in view of the order dated 27.03.2012 passed by Hon'ble
Ist Division Bench in CWP No.5638 of 2012.

Vide my separate order dated 08.01.2019 passed in CWP
No.10541 of 2014, the same was ordered to be put up as per roster. The

applicant may espouse his cause in the said writ petition.

Application stands dismissed.

RSA No.1724 of 1986

Appellant-plaintiffs have not been successful in claiming declaration of having become owners in possession of suit land measuring 25 bighas 17 biswas and 0 biswasi bearing khata and khasra numbers as described in the head-note of the plaint along with one residential house bearing No.B.XX.280 situated in Ghamar Mandi, Civil Lines, Ludhiana.

It was alleged that the aforementioned property belonged to the British Government and forefathers of the plaintiffs were settled over the aforementioned piece of land for supply of the small bricks and earthen pots for the use of the Military personnel. Most of the properties, including the suit property, were purchased from the British Government, but the physical possession remained with the predecessor-in-interest of the plaintiffs. Jamal Ali purchaser never objected to the possession and on this ground, sought the ownership. It was further alleged that eviction proceedings were initiated against the predecessor-in-interest of the plaintiffs. The same were dismissed. The property was declared as evacuee and, therefore, vested in the Central Government under the Administration of Evacuee Property Act and in the absence of any acquisition proceedings, the plaintiffs were entitled to declaration, as sought, because the possession was continuous, notorious, hostile and had ripened into title.

The defendants opposed the suit by admitting the nature of the property to be evacuee and civil court has no jurisdiction to try the suit.

The trial court, on the basis of the pleadings of the parties to the lis, framed the following issues:-

- “1) Whether the plaintiffs are entitled to the declaration and injunction prayed for? OPP*
- 2) Whether the plaintiffs have become the owners by way of adverse possession?*
- 3) Whether the property in dispute is an acquired evacuee property? OPD*
- 4) Whether the civil courts have no jurisdiction to entertain the present suit as alleged in paras no.1 and 2 of the preliminary objections? OPD*
- 5) Whether the plaintiffs are estopped from filing the present suit as mentioned in para no.3 and 4 of the preliminary objections? OPD*
- 6) Whether the defendants have disposed off part of the property in dispute, if so to what effect? OPD*
- 7) Whether the notice u/s 80 C.P.C. is invalid and illegal? OPD*
- 8) Relief.”*

Issue No.4 with regard to jurisdiction of the civil court was treated as preliminary and on the basis of the evidence, the trial Court dismissed the suit and appeal taken before the Lower Appellate Court was also dismissed.

Mr. K.S.Boparai, learned counsel for the appellant-plaintiffs submitted that the trial Court ought not to have dismissed the suit on preliminary issue as the plaintiffs sought the declaration under the various provisions of law and the pleadings were to be proved in accordance with law. The trial Court, in the absence of the evidence, erroneously accepted

the contention of the Government that the property was evacuee. Mere admission of the plaintiffs regarding mutation of the land in favour of the Government would not be a ground to non-suit the plaintiffs in claiming declaration.

Mr. Sandeep Mann, learned Assistant Advocate General, Punjab, representing the State, supported the orders under challenge while submitting that the plaintiffs could not claim declaration on the basis of adverse possession in view of the law laid down in **Gurudwara Sahib Versus Gram Panchayat Village Sirthala and another**, 2013 (4) RCR (Civil) 703. It is too farcical in remanding the matter to the court below and, thus, prayed for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the paper book, records of the courts below and of the view that there is no force and merit in the submissions of the learned counsel for the appellants.

The main pith and substance of the suit reveals that the plaintiffs asserted ownership by way of long and settled possession. The aforementioned plea in affirmative as per the ratio decidendi culled out in the judgment cited supra is not maintainable. There is a categoric admission of the plaintiffs with regard to the nature of the property being evacuee. In such circumstances, the suit under the provisions of the Act which were in vogue at that time was not maintainable, though subsequently the Act dealing with the displaced persons was repealed. Be that as it may, in the present case, the prevailing law as applicable would be the source of consideration regarding applicability and not post repeal.

For the reasons mentioned above, I do not find any illegality or perversity in the concurrent findings rendered by the courts below. No

ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

I cannot remain unmindful of the fact that this Court had passed the following interim order on 13.06.1986:-

“Notice of motion for August 20, 1986.

Stay dispossession in the meantime.”

In view of the order passed, the interim order stands vacated.

January 8th, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No