

RSA-3818-1987 (O&M)

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

**RSA-3818-1987 (O&M)
Date of decision : 31.01.2019**

Amin Lal (d) through LRs and another

... Appellants

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.L. Sarin, Senior Advocate with
Mr. Nitin Sarin, Advocate
for the appellants.

Mr. Rohit Arya, AAG, Haryana.

AMIT RAWAL, J.

The appellants-plaintiffs in regular second appeal against the judgment and decree of the lower Appellate Court, whereby their suit for possession of land measuring 18 biswas Pukhta comprised in Khasra No.2348 and 2458, situated in the revenue estate of Bahadurgarh, decreed by the trial Court, has been dismissed.

The plaintiffs instituted the aforementioned suit on 28.03.1981 alleged that the plaintiffs were owner of the suit property, but the land was unauthorizedly in possession of the defendants. Despite repeated requested, they did not hand over the possession. The suit was preceded by a legal notice under Section 80 of the Code of Civil Procedure.

The defendants opposed the suit by taking preliminary objections and alleged that they had been in possession of the suit property

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since 1879 and had become owner by way of adverse possession as their possession was open, hostile, notorious and without any payment of rent. The Department/defendant had been using the land, in dispute, as a store of PWD, Department.

In replication, the contents of the written statement were refuted.

Since the parties were at variance, the trial Court framed the following issues:-

- 1. Whether State of Haryana has become owner of the suit land by way of adverse possession? OPD*
- 2. Whether plaintiffs have no locus standi to file the present suit? OPD*
- 3. Relief.*

Additional Issue No.1.

Whether the defendants have made any unauthorized amendment in the written statement. If so, to what effect? OPP

In order to prove the case, the plaintiffs examined as many as seven witnesses and brought on record various documents (Ex.1 to Ex.P9), whereas the defendants examined ten witnesses and brought on record many documents (Ex.D1 to Ex.D22).

On the basis of the evidence both oral and documentary, the trial Court decreed the suit, but the lower Appellate Court, in appeal, reversed the findings of the trial Court.

Mr. M.L. Sarin, learned Senior Counsel, assisted by Mr. Nitin Sarin, learned counsel appearing on behalf of the appellants-plaintiffs submitted that the judgment and decree of the lower Appellate Court is wholly erroneous and perverse. As per the settled law, the State/respondent/defendant cannot be permitted to take the plea of adverse

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possession, particularly, when the pleadings qua title of the plaintiffs were not emphatically denied. Plea of adverse possession impliedly an admission of title of the plaintiffs/appellants. The defendants failed to prove their continuous, notorious and open possession. Ex.DW10/1, copy of Misal Hakiyat, had totally been ignored, which *ex facie* established that the possession of the defendants was permissible and not hostile. In support of his contentions, reliance has been laid down to the *ratio decidendi* culled out by Hon'ble the Supreme Court in **State of Haryana V.s Mukesh Kumar and others, 2011 (10) SCC 404.**

Mr. Rohit Arya, AAG, Haryana, supported the judgment and decree of the lower Appellate Court being last Court of fact and law. There was categorical denial of ownership of the plaintiffs. All the witnesses of the plaintiffs admitted the long and continuous possession of the defendants. The store was not being used only as open space, but was also bounded by the wall. As per Article 65 of the Limitation Act, thirty year is the period to establish the adverse possession, which has been proved through documentary evidence brought on record, thus, urges this Court for dismissal of the present regular second appeal as there is no illegality and perversity in the judgment and decree, under challenge.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and of the view that the following substantial questions of law arises for determination:-

- 1. Whether the State can set up the plea of adverse possession and it impliedly tantamounts to admitting the title of the plaintiffs.*
- 2. Whether the judgment and decree of the lower Appellate*

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Court suffers from illegality and perversity.

It would be in the fitness of things to extract the specific averments made in para 1 of the plaint and that of the written statement, which reads as under:-

"Para 1 of the Plaint

1. That the plaintiffs are owners of khasra No.2348 measuring 0.10 biswas and Khasra No.2458, measuring 0.8 biswas total 18 biswas Pukhta situated within the revenue estate of Bahadurgarh. Copy of jamabandi and Acs-sizera azre attached herewith and the said khasra No. are situated on both sides of National Highway No.10.

Para No.1 of the Written statement

1. In reply of para No.1 of the plaint it is submitted that since the State is in possession of the suit land since 1879-80 and in view of the adverse possession of the State has become owner in possession. In col. No.23 of Misal Haquit BANDOBUUTT 1879-80, the possession of the State has been entered as MUSTKIL i.e permanent and cannot be disturbed. Copy of Bandobust of 1879-80 and 1909-10 and copies of jamabandi from 1911 to 1975 and khasra girdawaris 1975 to 1981 are attached.

The provisions of Order 8 Rule 5 of the Code of Civil Procedure enjoins an obligation upon the lower Appellate Court to appreciate the pleadings as to whether there was a specific or vague denial.

On plain and simple reading of the averments, the defendants have no where denied the title of the plaintiffs. By taking up the plea of adverse possession, title of the plaintiffs deemed to have been admitted. The question, as noticed above, would arise whether in view of law laid down in the judgment cited supra, the State can be permitted to take the plea of adverse possession. The answer is 'No'.

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The lower Appellate Court, in my view, abdicated in not appreciating the fact that if at all, the defendants had any doubt regarding the ownership of the plaintiffs, an issue, in this regard, would have been pressed into, but only issue of *locus standi* was framed. Ex.DW10/1, Misal Hakiyat, reflected under the column of cultivation as *Bikhar Bahali Kaza*, which means till the existence of orchard. It also reflected that the possession of the State/respondent was permissive. The defendants and their witnesses failed to place on record any material to establish that who was the real owner. On the other hand, jamabandi (Ex.P1) reflected that Amin Lal was recorded as owner to the extent of half share. All these factors weighed in the mind of the trial Court, but not adverted to, by the lower Appellate Court, thus, the judgment and decree of the lower Appellate Court, in my view, is not sustainable in the eyes of law being perverse, preposterous and fallacious. Accordingly, the substantial questions of law, as noticed above, are answered in favour of the appellants-plaintiffs and against the respondents-defendants/State. The judgment and decree of the lower Appellate Court is hereby set aside and that of the trial Court is restored.

Resultantly, the present regular second appeal is allowed.

31.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**