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

RSA-2211-1988 (O&M)

Date of decision : 29.03.2019

Attar Chand and another

... Appellants

Versus

Government College Gohana

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.D. Bansal, Advocate
for the appellants.

Mr. Pawan Kumar Jangra, Addl. A.G., Haryana.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the Courts below, whereby the suit of the plaintiffs for possession of the suit land comprised in old khasra No.1703 measuring 0-2 biswas, new Killa No.1253 measuring 0-9 marlas, has been dismissed by the trial Court and affirmed in appeal.

The plaintiffs, in the year 1983, sought the aforementioned relief on the premise that earlier Khasra No.1703 (0-2) was assigned new number as 1253 (0-9), which was a Well used for irrigation and drinking purposes. The said well was connected by 16 ½ feet wide path with Tehsil road running over old khasra No.1704 and 1705 now killa No.1256 and 1257, respectively. The plaintiffs acquired the character of the public path on the footing of customary right. Government College was built over Wakf land bearing Khasra No.1857 and 1861, which was taken

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by the Managing Committee, Punjab Wakf Board, Ambala. The defendants had no right and title over the land, but raised temporary construction over some Killa No.1253 shown by letter WXYZ measuring 162 sq. feet and by letters IMNO measuring 255 ¼ sq. feet., for water hut and latrines, whereas the remaining area remained vacant. It was averred that earlier in the year 1976, the suit was filed against a private college known as Haryana War Heoros Memorial College, Gohana, which was dismissed and the appeal preferred against the judgment and decree was withdrawn on 03.09.1987, with permission to file the fresh suit. Again the suit was filed, which was withdrawn, on 11.11.1980, with permission to file the fresh suit, as the private college was taken over by the Government i.e. on 12.02.1981, therefore, the plaintiffs have been consistently fighting for their rights since the closure of the path. Despite repeated requests, the defendants did not hand over the possession and demolish the construction, as such, were constrained to file the suit by arraying the proper parties.

The defendant opposed the suit by taking numerous objection qua limitation, non-joinder of necessary parties, *res judicata* and on merits, it was stated that they acquired owner of the property, by way of adverse possession, as the possession over the land was since 1964, knowledge to the plaintiff, much less, open and hostile.

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

- 1. Whether the plaintiffs are owners of old khasra No.1703 measuring 0-2 biswas, new Killa No.1253 measuring 0-9M, if so to what effect? OPP*
- 2. Whether there had been a well for drinking and irrigation purposes in the suit land mentioned in para No.1 of the*

plaint, if so to what effect/ OPP

- 3. Whether this well was connected by 16 ½ feet wide path Tehsil Road and land over Khasra No.174 and 1705 new Killa Nos.1256-1257, if so to what effect ? OPP*
- 4. If issue No.3 is proved in affirmative whether it was used by the public for going to the well from time immemorial, if so to what effect? OPP*
- 5. Whether the construction over killa No.1253 by the defendant is unauthorized and illegal as alleged, if so to what effect? OPP*
- 6. Whether the defendant has become owner of the suit land comprised in khasra No.1253, 1256 and 1257 by way of adverse possession, if so to what effect? OPD*
- 7. Whether the suit is bad for want of proper notice under S. 80 CPC, if so to what effect? OPD*
- 8. Whether the suit is not within time, if so to what effect?*
- 9. Whether the suit of the plaintiff is bad for non-joinder of necessary party as alleged in para No.2 of the preliminary objection, if so to what effect?*
- 10. Whether the suit of the plaintiff is barred by the principal of res judicata, if so to what effect? OPD*
- 11. Whether the suit of the plaintiff is not maintainable as alleged in para No.4 of preliminary objection, if so to what effect? OPD*
- 12. Whether the suit of the plaintiff is not maintainable in the present form, if so to what effect? OPD*
- 13. Whether the plaintiffs have no locus standi to file the suit, if so to what effect? OPD*
- 14. Whether the suit of the plaintiff is false and frivolous and if so whether the defendant is entitled to special costs under S. 35-A CPC? if so to what amount?*
- 15. Relief.*

Both the parties led evidence in support of their respective

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pleadings.

The trial Court on the basis of preponderance of evidence dismissed the suit by holding that the defendants have become the owner by way of adverse possession as well as on the ground of *res judicata*. The appeal was also dismissed.

Mr. S.D. Bansal, learned counsel appearing on behalf of the appellant submitted that the State, in view of the law laid down by Hon'ble the Supreme Court in **“State of Haryana V/s Mukesh Kumar and others” 2012 (1) RCR (Civil) 17, 2011 (10) SCC 404**, cannot take the plea under Articles 65 and 66 of the Constitution of India to grab the property of the citizen in the manner as has been sought to be done. The previous order does not bar the filing of the suit. He drew the attention of this Court to Ex.P2, whereby it was held that permission so called will not come in the way of the defendants to take all possible defences, but that does not mean that the plaintiffs could not file the suit against the proper parties, when the right to defend the suit did not survive any further. The Management of the College was taken over by the Government, on 12.02.1981, therefore, the present suit was filed on 24.01.1983. The plea of adverse possession tantamounts to admitting the possession and title, even the jamabandi reflected the same.

An application under Order 41 Rule 27 of CPC has also been filed for placing on record the certified copies of the sale deed dated 10.02.1960 executed in favour of the appellant, application and challan for depositing ₹75/- in the treasury (Annexure P-1 to P-3), on the premise that the said documents are necessary and essential for the adjudication of the present second appeal.

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Learned State counsel submitted that the findings of fact and law arrived at by the Courts below do not suffer from illegality and perversity. The plaintiffs miserably failed to prove the ownership. The jamabandi does not confer any title. Allowing of the application for additional evidence tantamounts to fill up lacuna and taking away the valuable right of the defendants, which cannot be permitted, at the appellate stage. The suit was barred by law of limitation, thus, urges this Court for dismissal of the present second appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that the following 'Substantial Questions of Law' arise for determination:-

- 1. Whether the suit of the appellants-plaintiffs was barred by law of limitation and doctrine akin to res judicata.*
- 2. Whether the defendants/State can take up the plea of adverse possession or acquire the ownership by prescription.*

The documents (Annexure P-1 to P-3) sought to be placed on record by way of additional evidence have not been controverted. The said documents are necessary and essential, much less, would help the adjudication of the lis. Accordingly, the application bearing CM No.3170-C of 1988 is allowed and the documents are taken on record.

Even otherwise, taking up the plea of adverse possession tantamounts to admission of the title. Now the question is posed before this Court, whether the previous suit and its withdrawal with a permission can be a bar, even if, liberty had been granted to the defendants to take all possible defences. I am of the view that if a statement is made to withdraw the suit with a liberty to file fresh, even if, the order does not mention the

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same, it is implied. The aforementioned view of mine is reiterated from the *ratio decidendi* culled out by the Co-ordinate Bench of this Court in **“Lal Singh V/s Ajit Singh and another” 2008 (3) RCR (Civil) 650**. For the sake of brevity, para 13 of the judgment reads as under:-

"13. In the same circumstances, this Court has held that the statement made by learned Counsel for the plaintiff has to be read as a whole and the same could not be split up into two parts i.e. permission to withdrawn the suit but without advertising to the other request of plaintiff for permission to file a fresh suit for same cause of action."

It is now a settled law that the State Government cannot take the plea of acquisition of ownership by law of prescription.

The State, in this case, cannot be permitted to usurp the property of the ordinary citizen by law of prescription. Both the Courts below remained oblivious of this fact, therefore, the findings arrived at by the Courts below, are not sustainable the eyes of law being suffered from illegality and perversity and the same are set aside. The Substantial Questions of Law, as framed above, are answered in favour of the appellant-plaintiff and against the respondents-defendants/State. The suit is, accordingly, decreed and the decree sheet is ordered to be prepared.

Resultantly, the present second appeal is allowed.

29.03.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**