

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

RSA No.2823 of 1988 (O&M)

Date of decision:23.04.2019

Mohan Lal @ Ramesh Mohan (deceased) through LRs ... Appellant

Vs.

Gopal (deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ajay Jain, Advocate
for the appellant.

Mr. D.K.Tuteja, Advocate
for the respondents.

AMIT RAWAL J.

C.M.No.7256-C of 2015

Allowed as prayed for.

RSA No.2823 of 1988 (O&M)

The present regular second appeal is directed against the concurrent findings of fact and law whereby suit for declaration having become owner by way of adverse possession and in alternative for redemption of the sale deed dated 13.02.1980 in respect of 7/12th share in land measuring 2 kanals 5 marlas, has been dismissed by the trial Court and affirmed in appeal.

The appellant-plaintiff sought the declaration that sale deed dated 13.02.1980 had not binding effect on the ownership rights on the

premise that Ram Piari widow of Dalu Ram, Jiwan Dass, Lakhmi Chand and Ram Sarup sons of Dalu Ram, were the owners of suit land. Ram Sarup expired and defendant no.7 was his widow. Defendant no.8 and his sons had admitted the plaintiff as owner and also obtained the sanction of mutation in his favour. They had been in possession of the suit land as owners whereas defendants no.5 to 8 and Dalu Ram had no right which was extinguished as the plaintiff had become the owner by way of adverse possession. This fact was in the full knowledge of the defendants no.1 to 7 and as well as Ram Piari. Defendants no.1 to 5 in connivance with defendants no.6 and 7 and Ram Piari vide sale deed dated 13.02.1980 without any authority sold the land and therefore, it did not have binding on the ownership rights and thus, sought the ownership being co-sharer to the extent of share of Jiwan Dass by claiming the pre-emption of sale deed on deposit of $\frac{1}{4}$ price.

The defendants opposed the suit and denied the status of the plaintiff as co-owner and stated that suit in affirmative was not maintainable.

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

- “1. Whether the plaintiff has superior right of pre-emption?OPP*
- 2. Whether the sale price was fixed in good faith and actually paid?OPD*
- 3. What was the market value of the suit land?OPD*
- 4. Whether the suit is time barred?OPD*

5. *Whether the suit is not maintainable in the present form?OPD*
6. *Whether the plaintiff is estopped by his own act and conduct to file the suit?OPD*
7. *Whether plaintiff has no locus standi to file the suit?OPD*
8. *Whether the impugned sale is illegal, void and not binding on the plaintiff of the reasons given in the plaint?OPP*
9. *Whether the plaintiff is the owner of the property in dispute, if so to what effect?OPP*
10. *Relief.”*

Thereafter, during the pendency of the suit, additional issues were also framed on 23.12.1986. The same reads thus:-

- “9A Whether the suit land is not agricultural land?If so, its effect?OPD
- 9B Whether the plaint is insufficiently stamped for the purpose of court fee?If so, its effect?OPD
- 9C Whether the vendor-defendants have effected improvement on the suit land after its purchase?If so, for what amount and to what effect?OPD
- 9D Whether the vendee/defendants incurred expenses on stamp and registration?If so, how much and to what effect?OPD
- 9E Whether the 1/5th pre-emption amount has not been

deposited in time? If so, its effect? OPD.”

Both the parties led extensive evidence.

Mr. Ajay Jain, learned counsel appearing on behalf of the appellant submitted that Executing Court cannot go behind the decree under execution but that does not mean unable to find out the true fact of the decree. Dalu Ram had one wife Ram Piari and four children i.e. Ram Sarup, Lakhmi Chand, Jeewan Dass and Janak. Jeewan Dass had two sons whereas Ram Sarup died leaving behind Radha Bai, his widow. Jeewan Dass had filed a suit for possession in respect of land in dispute and there was some compromise arrived at between the parties resulting into judgment and decree dated 27.10.1976. Even if the decree was not pleaded, it can always be looked into. In support of the aforementioned contention, relied upon the ratio decidendi culled out by the Hon'ble Supreme Court **AIR 1972 Supreme Court 1371 Bhavan Vaja and others vs. Solanki Hanuji Khodaji Mansang and another.**

Jeewan Dass had $\frac{1}{4}$ share which was admitted in witness box. He also admitted qua decree. One of the reasons for the Courts below to dismiss the suit was that suit land had fallen within the Municipal Limits of Hisar. As per the ratio decidendi culled out in **AIR 1918 Lahore 334(1) Salamat Rai Vs. Kanshi Ram and others**, even if an agricultural land is within the Municipal Limits, it will still be pre-empted.

Per contra, Mr. D.K. Tuteja, learned counsel appearing on behalf of the respondents submitted that entire tenor and mode of the suit

was claiming the declaration of having become the owner by way of adverse possession which is not permissible in view of the law laid down by the Hon'ble Supreme Court in **Gurudwara Sahib vs. Gram Panchayat Village Sirthala and Another 2013 (4) RCR civil 703, 2014 (1) SCC 669**. It is only a mutation which would not confer the title or create any right. Except averments in para 7 of the plaint regarding pre-emption, the pith and substance of the suit was to claim the ownership. Khasra no.7046 was in joint ownership of all the seven persons. Ex.P7 is the plaint of the previous suit. There were two set of defendants. There was no consent of other co-sharers and therefore, the statement could not be made and compromise could not be effected. Even defendant no.1 stated that he had constructed one room in the year 1981 and remaining later on. Lakhmi Chand-DW3 stated that land was lying vacant. Chander Bhan-DW4, witness from the improvement trust stated that land was situated within the municipal limits. The plaintiff thus failed to prove his status as that of co-sharer and thus, urged this Court for dismissal of the appeal.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as records of the Courts below and as well as case laws cited at bar with their able assistance and of the view that following Substantial Questions of Law arise for adjudication of the present appeal:-

“1. Whether the plaintiff can claim pre-emption of suit land in setting up alternative relief of declaration by way of adverse

possession?

2. *Whether the plaintiff had become the co-sharer?"*

On going through the documentary evidence on record, it is established that plea of adverse possession can always be taken by making the averment qua date, month and year.

Before I could reserve the judgment, Mr. Ajay Jain, Advocate drew the attention of this Court to the application bearing No.7256-C of 2015 under Order 23 Rule 1 read with Section 151 of Code of Civil Procedure to give up the plea of adverse possession confining to the relief of co-sharer. The application is not opposed by Mr. Tuteja, Advocate so decision of Substantial Question No.1 of Law is rendered redundant.

Coming to the point of co-sharer, the entire averments in the plaint do not reveal that plaintiff at any point of time had set up the compromise decree dated 27.10.1976. It would be in the fitness of things to extract the decree. The same reads thus:-

"It is ordered that the parties have filed compromise application Ex.P.X.1 and Ex.P.X.2 and the statements of appearing parties have been recorded. In view of their statements and that of their counsel a consolidated decree for possession of 12 marlas of land out of killa no.7045 and detailed in para 2 of the application is hereby passed in favour of Jiwan Dass (plaintiff in suit no.472 of 1975) and Rishi Raj and Shant Kumar (plaintiffs in civil suit no.342 of 1975) remaining claim of all the plaintiffs in both the suits hereby

dismissed and the parties are hereby left to bear their own costs. Duplicate copy of this decree sheet be prepared and placed on the second file Rishiraj and another vs. Mohana Lal (Civil suit no.342 of 1975).”

The decree was on the basis of the compromise where the suit filed by Jeewan Dass was dismissed. Even if the parties had suffered the statement, it is only the decree which has to be implemented.

There is no dispute to the ratio decidendi culled out in the aforementioned judgment cited (supra) but as evident from Ex.P7, in the previous plaint, there were two set of defendants. They were given up. There was no consent of other co-sharer and therefore, statement made by one of the co-sharers allegedly being part of the decree cannot confer the status of the plaintiff as of co-sharer. Even if the trial Court had held the plaintiff to be co-sharer, other party can always assail the aforementioned findings as per the provisions of Order 41 Rule 33 of Code of Civil Procedure. Once the plaintiff set up the plea of adverse possession tantamounts to admitting the title of the defendants and cannot volte-face and claim to be co-sharer.

Though the trial Court in paragraphs 14 to 16 held that it was urban property but the same was rebutted by Mr. Ajay Jain that the nature of the suit property has to be seen from the date of the institution of the suit. There is no dispute to the proposition but fact of the matter is that when the sale deed of 13.02.1980 sought to be pre-empted, carried the stamp duty of 14.5% meant for urban property whereas for rural was 5%. In such

circumstance, statement of DW4-Chander Bhan, house tax clerk would be meaningless, no person would sell out more stamp duty without knowing the fact that it would be under challenge as has been done in the present case.

The concurrent finding of fact and law cannot be said to be suffering from illegality and perversity. The Substantial Questions of Law aforementioned are answered in favour of the respondents and against the appellant.

Resultantly, the regular second appeal is dismissed.

April 23, 2019

savita

Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)

JUDGE

Yes/No

Yes/No