

RSA-716-1988 (O&M)

381

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

RSA-716-1988 (O&M)

Date of decision : 05.02.2019

Madan Lal (deceased) through LRs

... Appellant

Versus

Kundal Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.G. Chaudhary, Advocate
for the appellant.

Ms. Deepali Puri, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the concurrent finding of fact, whereby the suit of the respondents-plaintiffs for possession of shop marked 'ABCD' shown in red colour situated at Taragarhi Gate, District Gurdaspur, has been decreed by the trial Court and affirmed by the lower Appellate Court.

It was alleged that Mallo Ram son of Hakam Chand was the owner of the said shop. He died on 24.03.1981 leaving behind the plaintiffs as legal heirs by virtue of valid Will dated 20.02.1968, registered on 22.02.1968. The defendant was inducted as a tenant by their father on 01.06.1977 at the monthly rent of ₹16/-. The defendant denied the relationship of landlord and tenant and claimed his ownership by way of adverse possession. Rent petition preferred before the Rent Controller was

RSA-716-1988 (O&M)

allowed, but the the Appellate Authority vide order dated 05.04.1983, rejected the same. The defendant was asked to deliver the possession, but refused to do so and in these circumstances, a cause of action arose to file the suit.

The defendant contested the suit and denied the possession as of trespasser, but claimed ownership. It was stated that the possession was hostile towards Mallo Ram since 1965.

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

- 1. Whether the defendant has become owner by adverse possession of the property in suit? OPD*
- 2. Whether the suit land was mortgaged with Muslims before the Partition of the Country? If so, its effect? OPD*
- 3. Whether the suit is not within time? OPD*
- 4. Relief.*

In order to prove the case, the plaintiff examined as many as six witnesses and produced on record documents Ex.P1 to Ex.P9. On the other hand, the defendant examined five witnesses and produced on record documents Ex.D1 to Ex.D6.

Mr. K.G. Chaudhary, learned counsel appearing on behalf of the appellant-defendant submitted that the findings of the Courts below are not sustainable in the eyes of law as the provisions of Article 65 of the Limitation Act, enable the party to take the plea of adverse possession and claim the ownership by efflux of time. The ingredients of *animus possidendi*, knowledge to the whole world, had been proved. The plaintiffs failed to prove the ownership of the property and even the Will propounded

RSA-716-1988 (O&M)

had not been proved. As per Ex.P2, shop, in question, was already mortgaged with Alibaksh, thus, urges this Court for setting aside the concurrent findings of fact.

Ms. Deepali Puri, learned counsel appearing on behalf of the respondents-plaintiffs supported the judgments and decrees, under challenge as taking the plea of adverse possession tantamounts to admitting the title of plaintiffs, thus, urges this Court for dismissal of the present regular second appeal as there is no illegality and perversity.

I have heard learned counsel for the parties, appraised the paper book as well as the records of the Courts below and of the view that the following "Substantial Questions of Law" arise for determination:-

- 1. Whether the appellant-defendant has been able to prove ingredients of adverse possession i.e. year, date or period.*
- 2. Whether the judgments and decrees of the Courts below suffer from illegality and perversity.*

This Court vide order dated 19.05.1995, while considering the prayer for stay, granted the status quo.

It is a settled law that a person, who has set up the plea of the adverse possession, admits the title of the plaintiffs. The proposition now arises is whether the defendant has been able prove the ingredients. Law on proving the adverse possession is no longer *res integra* in view of the *ratio decidendi* culled out by Hon'ble the Supreme Court in “**Ram Nagina Rai V/s Deo Kumar Rai (Deceased) through LRs and another**” 2018 (5) RCR (Civil) 398. For the sake of brevity, the relevant paras No.11 to 16 of the judgment read as under:-

"11. Thus, it is important to assess whether such intention to

RSA-716-1988 (O&M)

dispossess is apparent to the actual owner or not. The intention of the adverse user must be communicated at least impliedly to the actual owner of the property. His hostile attitude should be open to the knowledge of the real owner. It follows that the intention and possession of the adverse possessor must be hostile enough to give rise to a reasonable notice to the actual owner.

12. Applying the test of nec vi, nec clam, nec precario i.e., 'without force, without secrecy, without permission' as an established test for finding adverse possession, we find that the defendants have not proved their possession to be adverse to that of the real owner inasmuch as they entered into possession as licensees to begin with and there is nothing on record to show as to when the permissive possession became adverse to the interest of the real owner. 'Animus possidendi' is one of the ingredients of adverse possession, and unless the person possessing the property has the requisite hostile animus, the period of prescription does not commence. Virtually, the defendants are required to prove the possession to be adequate in continuity, adequate in publicity and to adequately show that their possession is adverse to that of the true owner. It must start with wrongful dispossession of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

The physical fact of exclusion, possession and animus possidendi to hold as owner, in exclusion to the actual owner, are the most important factors to prove adverse possession.

A person pleading adverse possession has no equities in his favour. Since he is trying to take away the rights of the true owner, it is for him to clearly plead and establish all the facts necessary to establish his adverse possession.

13. It is an established position of law that insofar as Articles 64 and 65 of the [Limitation Act](#) are concerned, once a party proves its title, the onus of proof would be on the other party to

RSA-716-1988 (O&M)

prove the claim of title by adverse possession. In this case, it is an admitted fact that the ownership of the said suit property rests with the plaintiffs. In this given scenario, it is our considered view that the defendants have not proved the onus of adverse possession against the plaintiffs.

14. This court in the case of *Hemaji Waghaji vs. Bhikhabhai Khengarbhai and Ors.*,⁴ has opined that there is an urgent need for a fresh look regarding the law on adverse possession by observing thus:

"32. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

33. We fail to comprehend why the law should place premium on dishonesty by legitimising possession of a rank trespasser and compelling the owner to lose his possession only because of his inaction in taking back the possession within limitation.

36. In our considered view, there is an urgent need of fresh look regarding the law on adverse possession. We recommend the Union of India to seriously consider and make suitable changes in the law of adverse possession." This aforementioned observation was reiterated by this Court in a subsequent judgment

RSA-716-1988 (O&M)

of [State of Haryana v. Mukesh Kumar](#), wherein the Court observed that the law of adverse possession needs a re-look, holding the right to property to be a human right, in addition to it being a constitutional or a statutory right.

15. In light of the above observations of this Court, we find that there is no absolute requirement to deem the mere possession of the suit property by the defendants to amount to adverse possession over the suit property. This would be in clear violation of the basic rights of the actual owner of the property. There is nothing on record to show that the defendants' permissive possession over the property became adverse to the interest of the real owner, at any point of time. On the contrary, the records reveal that the permissive possession of the defendants continued till the filing of the suit.

16. The defendants have relied upon certain paid tax receipts and khatian extracts. The Trial Court has, on facts, specifically found that these documents do not disclose the khatian and plot number, and even the tax receipts do not relate to the suit house. Also, the chaukidari receipts (A1 to A16) do not contain the khatian of the suit house. These receipts have been unfortunately believed to prove that the defendants are in adverse possession of the disputed land. Even assuming that those documents relate to the suit house, they, at the most, depict the possession of the defendants and not their adverse possession."

The aforementioned ingredients have not been proved on record i.e. date, month or period, except since 1965. There is no limitation to the title, whenever the title is asserted by way of inheritance. PW2 Ram Lal, Lumdardar, stated that his father's shop was adjoining to the disputed shop and the defendant was inducted by Mallo Ram as tenant. The factum

RSA-716-1988 (O&M)

of mortgage has not been proved on record as no evidence has been led. All these factors have been noticed by the Courts below while decreeing the suit.

Keeping in view the aforementioned facts, the substantial questions of law, as framed hereinabove, are answered in favour of the respondents-plaintiffs and against the appellant-defendant. I do not find any illegality and perversity in the judgments and decrees of the Courts. No ground is made out for interference.

Resultantly, the present regular second appeal is dismissed.

05.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**