

RSA No.1435 of 1992 (O&M)

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

RSA No.1435 of 1992 (O&M)

Date of decision:01.04.2019

Krishana Kumari (since deceased) through LRs and another

... Appellants

Vs.

Darshan Lal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. V.K.Kataria, Advocate
for the appellants.

Mr. Sandeep Sharma, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the concurrent findings of fact and law whereby suit of the appellant-plaintiffs for possession of rooms of sarai, has been dismissed while rendering the findings on issue nos.5 and 6 stating the suit to be barred by law of limitation holding the defendants to be owners by way of adverse possession, while rendering the findings on all other issues in favour of the plaintiff.

The plaintiffs alleged that the aforementioned sarai was built by Ganga Devi in the memory of her husband Atma Ram Dhir. She had two daughters Tara Devi and Dwarka Devi. Dwarka Devi died issueless but Tara Devi had two daughters namely Krishana Kumari and Amar Kaur. Ganga Devi had handed over the control of sarai to Maghi Ram. On the demise of Maghi Ram, his sons Hari Ram and Ram Sarup had been managing the affairs of the sarai. The vacant rooms were in possession of the plaintiffs

and defendants no.20 and 21. The defendants forcibly occupied the possession of the rooms without any right and title, thus, in such circumstance, the aforementioned suit was filed.

Defendants no.1 and 5 to 17 appeared through counsel and filed written statement and raised the plea of having acquired the title by way of adverse possession and suit being barred by law of limitation as the possession of suit property was beyond 12 years.

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

- “1. Whether the plaintiffs and defendants no.1 to 21 are managing and controlling the Inn in dispute and defendants no.1 to 19 are the trespassers?OPP*
- 2. Whether the plaintiffs are entitled to possession?OPP*
- 3. Whether the plaintiffs have no locus standi to file the suit?OPD*
- 4. Whether the suit is bad for mis joinder and cause of action?OPD*
- 5. Whether suit is within limitation?OPP*
- 6. Whether defendants have become owners by adverse possession?OPD*
- 7. Whether the suit is bad for non joinder and mis joinder of parties and multifariousness?OPD*
- 8. Whether the suit is barred by res judicata?OPD*
- 9. Whether the suit is barred under Order 2 Rule 2*

CPC?OPD

10. Whether the permission under Section 92 CPC is necessary?If so, its effect?OPD

11. Whether this Court has no jurisdiction?OPD

12. Whether suit property is not properly described?OPD

13. Whether the proper guardian of all the defendants minor has not been appreciated, if so, its effect and not proper served?OPD

14. Whether the suit is properly valued?OPD

15. Relief.”

Both the parties led extensive evidence.

Learned counsel appearing on behalf of the appellants submitted that defendants did not have any right to argue the findings on issues in the absence of any appeal before the Lower Appellate Court and cross-appeal in this Court. In order to establish the adverse possession except bald testimony, there was no other evidence that possession was more than 12 years old.

In support of the aforementioned contention, relied upon para nos.8 and 12 of judgment rendered by the Hon'ble Supreme Court **Ram Nagina Rai and another Vs. Deo Kumar Rai (deceased) by LRs and others 2018(5) RCR (Civil) 398** and **Hemajit Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan and others 2009(16) SCC 517** to contend that adverse possession ousts the true owner on the basis of inaction but said plea has been held to be irrational, illogical as extremely

harsh for true owner and a windfall for a dishonest person who had illegally taken possession of property. Neither any continuity, publicity qua adverse possession to the knowledge of the whole world has come on record.

Per contra, Mr. Sandeep Sharma, learned counsel appearing on behalf of the respondents submitted that witnesses of the plaintiffs categorically admitted the possession of the defendants for more than 20-25 years. There was no cross-examination to the categoric assertion in examination-in-chief as per the settled law deemed to have been admitted.

I have heard the learned counsel for the parties, appraised the judgments and decrees as well as record of the Courts below and of the view that the following Substantial Questions of Law arise for adjudication of the present appeal:-

- “1. Whether the judgments and decrees of the Courts below suffer from illegality and perversity?
2. Whether the suit could be stated to be barred by law of limitation and defendants acquired the title by way of adverse possession?”

The law with regard to adverse possession is no longer *res integra*. The Hon'ble Supreme Court in **Hemajit Waghaji Jat's case (supra)**, gave the following findings vide para 34 and 35 which read thus:-

34. 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.

35. We fail to comprehend why the law should place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the owner to loose its possession only because of his inaction in taking back the possession within limitation.”

It is settled law that a person who claims adverse possession has to show the date when he came into possession, nature of possession, factum of possession, continuity and possession was open and undisturbed. There is no such evidence except the bald assertion in the written statement. Thus, cross examination would not be fatal as the defendants did not state the aforementioned ingredients in examination-in-chief. One line here in cross examination and examination in chief cannot discharge the onus which heavily relied upon the defendants to claim the title by way of adverse possession.

The aforementioned view of the Hon'ble Supreme Court has also been reiterated in Ram Nagina Rai's case (supra) in paragraphs 12 to 16. The same reads as under:-

“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 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 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 substantial questions of law aforementioned are answered in favour of the appellant-plaintiffs and against the respondent-defendants. The judgment and decree on issue nos.5 and 6 is hereby set aside. The suit is decreed in toto. Decree sheet be prepared accordingly.

The regular second appeal is allowed.

(AMIT RAWAL)
JUDGE

April 01, 2019

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No