

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

RSA-724-2005(O&M)

Date of decision:-9.12.2019

Balbir Singh alias Bheera and others

...Appellants

Versus

Gurdeep Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Puneet Jain, Advocate for
Mr.Rakesh Gupta, Advocate
for appellant No.1.

Mr.Saurabh Bajaj, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Gurdeep Singh had brought a suit for possession against defendants i.e. Balbir Singh @ Bheera and Heera Singh, both sons and Smt.Harnam Kaur widow of Sohan Singh, all residents of Amritsaria Farm, Ward No.4, Pehowa, District Kurukshetra for the reason that defendants had taken unauthorized possession of the suit land and in earlier litigation

between the parties in the form of civil Suit bearing No.348/96 titled as 'Gurdip Singh Vs. Balbir Singh' decided on 24.1.2000, it was so observed mentioning that the plaintiff could file a suit for possession against the defendants with respect to the suit land. The plaintiff had requested the defendants to hand over the possession of the suit land to him but in vain. As such, he approached the Court by way of filing a civil suit.

On notice, defendants No.1 and 2 had put in appearance. Defendant No.2 had filed a written statement contesting the suit, which was adopted by defendant No.1. In such written statement preliminary objections were taken that suit was barred under Order 2 Rule (II) CPC; suit was under valued; suit was liable to be dismissed on account of concealment of material facts from the Court; that the plaintiff was estopped by his own act and conduct from filing the suit since the defendants had constructed the house in the suit land 36 years ago to the knowledge of the plaintiff and his brother Sarjit Singh and all other concerned, in the process, they have spent a huge amount on the construction and the plaintiff had never raised any objection over the same. On merits, it was denied that the plaintiff is owner of the suit land, rather it was contended that defendants are owners of the same; that the suit property is in the form of a house comprised in Rectangle No.95, killa No.27. In the end, a prayer for dismissal of the suit was made.

As far defendant No.3 is concerned, she had not appeared despite service and was proceeded against ex-parte.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the plaintiff is owner of the suit property? OPP.
2. Whether the suit of the plaintiff is barred under Order 2 Rule 2 CPC? OPD.
3. Whether the defendants have become the owner of suit land by adverse possession? OPD.
4. Whether the suit of the plaintiff has not been valued properly for the purpose of Court fees? OPD.
5. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD.
6. Whether the suit of the plaintiff is time barred? OPD.
7. Relief.

Both the parties led evidence in respect of their claims.

During the course of his evidence, the plaintiff got his statement recorded as PW1 and he has further examined Sh.Parveen Kansal, Draughtsman as PW2 besides tendering certain documents.

On the other hand, the defendants had examined

Sh.Pardeep Gupta as DW1, Sh.Kamal Babu, Clerk as DW2, Sh.Gurmeet Singh as DW3, Sh.Bhag Singh as DW4, Sh.Surjeet Singh as DW5, Sh.Hawa Singh as DW6 and Sh.Balbir Singh as DW7 besides tendering certain documents.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiff and against the defendants holding the plaintiff is owner of the suit property; issue No.2 was decided against the defendants and in favour of the plaintiff holding that suit is not barred under Order 2 Rule 2 CPC, issue No.3 was decided in favour of the defendants and against the plaintiff, issue No.4 was decided against the defendants and in favour of the plaintiff, issue No.5 was decided in favour of the defendants and against the plaintiff, issue No.6 was decided holding that the suit was time barred. Resultantly, suit of the plaintiff was dismissed with costs. This was so done vide judgment and decree dated 18.11.2002.

The plaintiff was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, Kurukshetra, which was assigned to Additional District Judge (Ad hoc), Fast Track Court, Kurukshetra, who vide judgment and decree dated 14.12.2004 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff holding him entitled to possession of land measuring 11 marlas comprised in khewat No.838, khatoni No.1119, rect. No.95, killa

No.27(37-9) situated within the revenue estate of village Pehowa, Tehsil Pehowa, District Kurukshetra.

Now it was turn of the defendants to feel dissatisfied and they had filed the present regular second appeal before this Court, notice of which was issued to the respondent/plaintiff, who has appeared through counsel.

I have heard learned counsel for the appellant No.1 and learned counsel for the respondent besides going through the record.

In the jamabandi for the year 1994-95 Ex.P4 khewat No.838, khatoni No.1119 is shown to be *gair mumkin abadi* and the name of Gurdeep Singh appears as one of the co-owners in the said jamabandi. In the Civil Suit No.348/96 titled as 'Gurdeep Singh Vs. Balbir Singh', a suit for permanent injunction while deciding issues No.1 and 2, the Court had held the plaintiff to be owner in joint possession in respect of the suit land. The plaintiff was found entitled to file a suit for possession against defendant for 11 marlas of land out of the suit property measuring 37 kanals 9 marlas.

The trial Court while deciding issue No.3 has come to the conclusion that the possession of defendants is very old and they have constructed their house over the encroached land. The trial Court observed that the plaintiff had not convened any Panchayat, reported the matter to the police or had not offered any resistance at the time of alleged encroachment and the plaintiff woke up only after

decision of the case in his favour with respect to 11 marlas of land. However, all the witnesses examined by the defendants have stated that the possession of the defendants over the house is more than 30 years old. Furthermore, it was clear that defendants had come into possession by virtue of sale letter since 1964. The defendants had examined Kamal Babu son of Sabhu Ram, Clerk, Municipal Committee, Pehowa as DW2. The defendants had further examined Gurmeet Singh, ALM, who had brought the electricity connection record stating that meter was installed in Amritsaria Farm, Pehowa in the name of Heera son of Sohan Singh on 14.7.1980 and it was disconnected in the year 1996 due to non-payment of the bill. DW4 Bhag Singh had deposed regarding possession of Balbir Singh @ Bheera for the last 38 years. The trial Court has drawn the conclusion that the defendants are in possession which is open, continuous and to the knowledge of the plaintiff from 1954 i.e. for more than 12 years, so it can be said that defendants have become owners of the suit land by way of adverse possession.

Whereas the First Appellate Court in para No.10 of its judgment has observed that previously a civil suit for injunction was filed, which was disposed of vide judgment dated 24.1.2000, wherein it was held that respondent No.1 in possession of 11 marlas of the suit land; in that suit out of the present respondents, Balbir Singh alone was the party; in that litigation, it was specifically held that the

appellants shall be entitled to the separate suit for 11 marlas of land which is suit land in that suit also.

In my view, the First Appellate Court has fallen in error in coming to the conclusion that no adverse possession was made out. The appreciation of the legal and factual position by the trial Court was proper and appropriate, whereas it is not so as regards the First Appellate Court. Various factors are to be taken into consideration while considering the plea of adverse possession by the defendants. It has come on the record that defendants have constructed a residential house along with shop over the suit land. The plaintiff while getting his statement recorded had stated that he had constructed his house 5-7 years back and it was encroached upon by the defendants. This fact needs to be considered carefully and according to the plaintiff the defendants had encroached upon his constructed house and not upon the site. As rightly observed by the trial Court that this contention does not appear to be plausible and satisfactory since the plaintiff is not shown to have taken any action against the defendants by reporting the matter to the police or other wings of administration or to the local Gram Panchayat. He is not shown to have offered any resistance to the alleged encroachment by defendants over the house allegedly constructed by him. He is not shown to have taken any legal action in that regard. In the earlier litigation, he was not found to be in possession of 11 marlas of land,

then how could it be that he had constructed house over it from which he was allegedly dispossessed by the defendants. The first suit filed by the plaintiff had been decided on 24.1.2000. The possession of the defendants comes out to be there even prior to 1996. The defendants are relying upon sale letter of year 1964 to form basis of their claim that they had constructed house over the plot thereafter. Though for want of registration that document has been found to be inadmissible in evidence by the Courts below but then at least it can be looked into for collateral purposes. The defendants had examined DW1 Pardeep Gupta, who proved his report Ex.D1 and stated that disputed house is 30-40 years old. DW2 Sh.Kamal Babu, Clerk, Municipal Committee, Pehowa, who had brought the house tax assessment register from 1994-95 to 1997-98 had stated that the name of Meera son of Sohan Lal is shown to be in possession of property No.144. There seems to be some confusion in writing the name and that could be read as Meera, Heera or Bheera son of Sohan Lal or Sohan Singh. The defendants had further examined DW3 Sh.Gurmeet Singh, ALM from Electricity Board, who had brought the record stating that the meter was installed in Amritsaria Farm, Pehowa in the name of Heera son of Sohan Singh on 14.7.1980 and it was disconnected in the year 1996 due to non-payment of bill. DW4 Sh.Bhag Singh had stated that Balbir Singh @ Meera and Harman Kaur were residing in the house for the last 38 years. Balbir Singh

was the owner in possession of the house and Gurdeep Singh knows about possession of the defendants from the beginning and he has no concern with the same. DW5 Sh.Surjit Singh son of Puran Singh also deposed on those very lines. DW6 Sh.Hawa Singh, Meter Reader stated that he was posted in Sandbali Feeder, HSEB from 1975-83 and he used to visit Amritsaria Farm. The meter was in the name of Hira Singh, who was living in the disputed house along with his family. DW7 defendant - Balbir Singh @ Bheera had stated that he, his mother and brother Hira Singh have been in possession of the suit property since 25.1.1964; that out of this suit property six marlas of land was purchased by his mother from the real brother of the plaintiff Surjit Singh for consideration vide Ex.D-3/B and they were delivered possession at that very time; it was a vacant plot at the time of their purchase; that he, his mother and Hira singh had constructed house over it and they are residing therein for the last 38 years; that they are registered voters at this address. He proved copy of voter list Ex.D5 to Ex.D9. He had further stated that they had got ration card at that address. The electric meter was in the name of Hira Singh, which was disconnected due to non-payment of the electric bill. Their possession has been peaceful, hostile and continuous.

The trial Court had rightly come to the conclusion that possession of the defendants has been actual open, hostile, exclusive, notorious and adverse to the knowledge of entire world including the

true owner. The plaintiff had failed to establish that he was in possession of suit land within 12 years from filing of the suit i.e. March 21, 1975, in that way he cannot get possession. Article 65 of the Limitation Act provides that a limitation for possession of immovable property or any interest therein based on title is 12 years when the possession of the defendants becomes adverse to the plaintiff. Here the possession of the defendants is proved to be from 1954 onwards, whereas the suit was filed on 14.6.2000. Therefore, the suit is clearly time barred.

Though the plaintiff is basing his claim on the observations made by the Court in a suit for permanent injunction filed by him but he cannot possibly do so. The trial Court had misdirected itself in asking the plaintiff to file a suit for possession. The law is very clear that question of title is not to be decided in a suit for injunction. Even otherwise, if the Court had passed certain remarks, those are to be seen and interpreted within four corners of the law. The plaintiff could file a suit for possession but that was subject to law of limitation and merely because of such observations, the provisions of law providing limitation for filing suit for possession on the basis of title cannot be ignored.

It needs to be observed here that learned Additional District Judge (Ad hoc), Fast Track Court, Kurukshetra did not go into the depth of the matter and considering irrelevant factors came

to the conclusion that defendants have been unable to establish adverse possession, in the process setting aside legal and proper finding in that regard by the trial Court that defendants had successfully established plea of adverse possession. Learned Additional District Judge (Ad hoc), Fast Track Court, Kurukshetra had completely misinterpreted the law on the subject and propounded a theory that it was permissive possession on the basis of unregistered sale deed. It was not so because it is nobody's case that the defendants had come in possession under the authority or direction of the plaintiff, rather it was on the basis of an independent sale transaction between brother of the plaintiff. Learned Additional District Judge (Ad hoc), Fast Track Court, Kurukshetra was heavily influenced by the fact that permissive possession cannot turn into adverse possession. However, it was not the case here.

It has come to my notice that an application bearing CM-11896-C-2013 had been filed purportedly on behalf of appellant No.2 that the matter had been compromised between the parties because of intervention of the respectables of the locality on 5.1.2011 and the applicant/appellant No.2 had filed an application bearing CM-8197-C-2012 for withdrawal of the appeal in view of the compromise, therefore the matter be decided accordingly. This application is dated 30.10.2013. Vide order dated November 15, 2013, the application was ordered to be taken up with the main case. However, no one is

present in the Court today to press the application. Even otherwise, the appeal had been filed jointly by all the three appellants and only one appellant cannot withdraw the appeal. Such applicant/appellant No.2 has not appeared in the Court today for making prayer as given in the application. Affidavits of any of the parties/attesting witnesses of the alleged agreement are not there on the record. Under the circumstances, there is nothing to show that the matter has in fact been compromised as alleged in the application. The application is not being pursued properly even. Therefore, the same stands dismissed.

The judgment and decree passed by the trial Court is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law and it was wrongly upset by learned Additional District Judge (Ad hoc), Fast Track Court, Kurukshetra. That wrong is being undone by acceptance of the present appeal.

Resultantly the judgment and decree passed by Additional District Judge (Ad hoc), Fast Track Court, Kurukshetra are set aside and the judgment and decree passed by the trial Court dismissing the suit of plaintiff are restored.

The appeal stands allowed accordingly with costs.

9.12.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No