

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.110 of 2010 (O&M)

Date of decision: 12.04.2019

Kewal Ram

..... Appellant

Versus

Bala and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. N.D. Achint, Advocate
for the appellant.

Mr. Sachin Mittal, Advocate
for the respondents.

ANIL KSHETARPAL, J.

Defendant No.2-appellant is in appeal against the concurrent finding of fact arrived at by the Courts below.

Although, at the time of admission of the appeal, following question of law was framed as proposed by learned counsel for the appellant:-

“Whether the entries in the revenue record as tenants can help the said tenants to perfect their title by way of adverse possession?”

However, after hearing learned counsel for the parties, this Court is of the view that the appeal filed deserves to be allowed on a short ground. Hence, the question which require consideration is “Whether a suit filed by the plaintiffs for declaration that he has become owner by prescription of time or by way of adverse possession is maintainable?”

The plaintiffs-respondents filed a suit for declaration that they are owners in possession of agriculture land measuring 22 kanals on the basis of oral sale dated 09.06.1955 for a sum of Rs.3200/-. The plaintiffs pleaded that if the oral sale is denied, the plaintiffs have continued in possession and therefore, perfected their title by way of adverse possession. In the written statement, the execution of the oral sale was denied. It was pleaded that entry in the revenue record has been made in collusion with revenue officials. It was further pleaded that entry of plaintiffs being tenant is also wrong.

Learned trial Court on appreciation of evidence held that the immovable property worth more than Rs.100/- cannot be transferred/sold through an unregistered instrument. Thus, the Court held that even if oral sale is proved, still that does not result in transfer of title. However, the trial Court held that the possession of the plaintiffs is continuous and uninterrupted from the year 1955 and therefore, they have perfected their title by way of adverse possession. The findings arrived at by the trial Court were affirmed by the First Appellate Court.

Learned counsel appearing for the appellant submitted that in view of the judgment passed by the Hon'ble Supreme Court in Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and another, (2014) 1 SCC 669, the suit filed by the plaintiffs was not maintainable. He further relied upon a Division Bench judgment of this Court in the case of Vijay Bhawar and others Vs. Ajaib Singh, 2015(3) RCR (Civil) 504, which also lays down that the suit filed by the plaintiffs for declaration that he is owner in possession is not maintainable.

On the other hand, learned counsel for the respondents-

plaintiffs has stated that Section 34 of the Specific Relief Act enables any person entitled to any legal character or to any right as to any property is entitled to file a suit against any person denying or interesting to deny his title to such character or right. Hence, he submitted that the suit filed for declaration cannot be held to be not maintainable. He submitted that the plaintiffs had become entitled to ownership right as to immovable property i.e. the suit property and therefore, the suit filed by the plaintiffs was maintainable. He further submitted that Hon'ble Supreme Court as well as Division Bench have not consider this aspect. He further submitted that a person who has become owner by way of adverse possession can never be declared owner if it is held that the suit filed by him is not maintainable. While elaborating, he submitted that if a person who is in continuous possession has perfected his title by way of adverse possession is not entitled to maintain a suit, then he can only be defendant and as such, there cannot be any declaration in his favour. As a defendant, he would only be defending the suit which may be filed against him. In any case, no declaration of right to property would not be passed. He further submitted that the plaintiffs while filing the suit on the basis of having perfected their title by way of adverse possession are also not asking of right to immovable property but are also asking for declaration to their legal status. He further submitted that basically while seeking such declaration, the plaintiffs in fact want that their name be entered in the revenue record. He relying upon Section 45 of the Punjab Land Revenue Act has submitted that correction in the record of rights i.e. Jamabandi is possible only through a suit for declaration. He further referred to Section 27 of the Limitation Act which provide that on expiry of period prescribed under the Act, the right of the

owner shall stand extinguished. Hence, he submitted that the suit filed by the plaintiffs cannot be said to be not maintainable.

No doubt, learned counsel appearing for the respondents has made the submissions which are debatable in detail, however, keeping in view the judgments passed by the Hon'ble Supreme Court followed by a Division Bench of this Court, this Court being bound by the judgment of Larger Bench of this Court as also of the Supreme Court declare that the suit filed by the plaintiffs in the present case was not maintainable. Hence, the question framed earlier part of the judgment is answered against the respondents and in favour of the appellant.

As regards second question of law framed at the time of admission of the appeal extracted above, no arguments were addressed by learned counsel for the parties.

In view thereof, the judgments passed by the Courts below are set aside.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Regular Second Appeal is allowed.

12.04.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No