

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

**RSA No.3192 of 2012 (O&M)
Date of Decision.03.05.2019**

Lala Ram and others ...Appellants

Vs

General Public and others ..Respondents

2. RSA No.1959 of 2013 (O&M)

Manohari and others ...Appellants

Vs

Prithvi and others ..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sanjay Mittal, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

C.M. No.5211-C of 2013 in RSA No.1959 of 2013

For the reasons stated in the application, delay of 193 days in re-filing of the appeal is condoned.

Application is allowed.

Main Cases

This order of mine shall dispose of two regular second appeals bearing Nos.3192 of 2012 and 1959 of 2013. RSA No.3192 of 2012 has arisen out of Civil Suit No.563 of 1996 titled as ‘Kanshi Ram and others Vs. General Public and others’ (hereinafter called the first suit) and RSA No.1959 of 2013 out of Civil Suit No.316 of 1996 titled as ‘Prithvi and others Vs. Umrao and others’ (hereinafter called the second suit) filed on behalf of successor in interest of defendants in the first suit. Both the suits were decided by common judgment

and therefore, the present appeals are being decided together.

Plaintiffs in the first suit sought declaration being owners in possession of the suit land as about 80-90 years ago, defendant Nos.2 to 4 due to non payment of land revenue abandoned their share in suit property by relinquishment of ownership in favour of ancestors of plaintiffs and at the time of abandonment, defendants No.2 to 4 made the plaintiffs as owners of the suit property. Plaintiffs alleged to have invested huge amount in making the land cultivable and even installed pipelines, tubewell etc. and had also been paying the land revenue. In the alternative also claimed ownership by way of adverse possession. There was also prayer made for changing entry in the revenue record regarding the ownership column which is shown in the name of defendants.

Defendants contested the suit and averred that they are co-sharers in the suit property to the extent of 1/5th share being legal representatives of Moti, Chhaju and Mam Chand sons of Nonda. At the time of settlement for doing business, defendants No.2 to 4 ancestors of defendants left property at village Bachini. There was no such abandonment in favour of the plaintiffs. It was just oral settlement that defendants, on demand, would restore the possession. In fact, status of plaintiffs was none else but that of a trustee. Earlier the plaintiffs had become dishonest and filed Civil Suit No.446/92 titled 'Umrao Vs. General Public', which was decided on 26.4.1995 and mutation bearing No.764 dated 20.8.1995 was recorded. The same was stated to be illegal and null and void.

Defendants in their other suit by challenging decree claimed 1/5th share in the suit property.

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

“1st suit.

1. Whether the plaintiffs are owners in possession of the suit property mentioned in para no.1 of the plaint to the extent of 1/5th share as alleged and also being in adverse possession? OPP

2. Whether the plaintiffs have no locus standi to file the suit? OPP

3. Whether the plaintiffs have no cause of action to file the suit? OPD

4. Whether the plaintiffs are estopped from filing the suit due to their act and conduct? OPD

5. Whether the suit is time barred? OPD

6. Whether the suit is bad for non joinder and mis joinder of necessary parties? OPD

7. Whether defendants No.5 to 23 are entitled for separate possession being LR's of deceased Moti, Chhaju and Mam Chand as alleged? OPD

8. Whether the defendants are entitled for special costs as alleged? OPD

9. Relief.

2nd suit.

1. Whether the plaintiffs are owners in possession of the suit property as alleged? OPP

2. Whether judgment and decree in civil suit No.440 of 27.11.1992 decided on 26.4.95 titled as Umrao etc. vs. General Public is null and void and liable to be set aside as alleged? OPP

- 3. Whether the plaintiffs has no right to file the present suit? OPP*
- 4. Whether the suit is not maintainable in the present form? OPD*
- 5. Whether the plaintiffs are estopped by their own act and conduct? OPD*
- 6. Whether the plaintiffs have no locus standi to file the present suit? OPD*
- 7. Whether the suit is bad for non joinder and mis joinder of necessary parties? OPD*
- 8. Whether the defendants are entitled for special costs under Section 35A CPC? OPD*
- 9. Relief.*

The plaintiffs in the first suit examined six witnesses whereas defendants examined three witnesses and in the second suit, defendants being plaintiffs examined five witnesses and plaintiffs being defendants also examined five witnesses.

The trial Court decreed the first suit on issues No.1 to 5 and 7 and second suit on issues No.1 to 6 in favour of plaintiffs in the first suit and defendants in the second suit declaring them owners of the land mentioned in para No.1 of suit titled 'Kanshi Ram Vs. General Public' by way of long and settled possession whereas the other suit was dismissed but plaintiffs in the second suit were held entitled for rectification of the revenue record and judgment and decree dated 26.4.1995 was held to be lawful. However, the lower Appellate Court allowed the appeals and dismissed the suit on issues No.1 to 5 and 7 in the first suit and issues No.1 to 6 in the second suit were decided in favour of plaintiffs therein. It is in these circumstances, both the appeals have been filed.

Mr. Sanjay Mittal, learned counsel appearing for the appellants submitted that the lower Appellate Court has fallen in error to hold that there was nothing on record to show that defendants No.2 to 4 had relinquished their share in favour of plaintiffs. The aforementioned fact has been proved by oral evidence of plaintiffs and corroborated by documentary evidence. Revenue record including jamabandies clearly mentioned that Chhaju, Moti and Mam Chand had left the village and they were recorded as absentees. The appellants have become absolute owners by way of adverse possession as possession had been long, settled and uninterrupted for the last more than 12 years. Defendants No.2 to 4 had left the village Bachini about 130 years ago but they never asked other co-sharers to surrender the possession. When the judgment and decree dated 26.4.1995 was passed in favour of some other co-sharers then grand sons and great grand sons of Chhaju came into action. Defendants were having knowledge of exclusive possession of the plaintiffs. The decree of 1995 was not an outcome of fraud and misrepresentation.

I am afraid aforementioned argument of Mr. Mittal is not sustainable for the simple reason that law with regard to claiming declaration of having become owner by way of adverse possession in affirmative is no longer *res integra*. Reference is invited to judgment passed by Hon'ble Supreme Court in **Gurudwara Sahib v. Gram Panchayat Village Sirthala and another 2013 (4) R.C.R. (Civil) 703.**

Even if a co-sharer or owner had remained absent, plaintiffs cannot be clothed with declaration of ownership on the basis of long and settled possession. The Hon'ble Supreme Court in

Hemaji Waghaji Jat Vs. Bhikha Khengarbhai Harijan and others

(2009) 16 SCC 517 has held that by virtue of efflux of time, owner cannot be deprived of the right unless and until certain ingredients of *animus possidendi* are proved to the hilt. Except long and settled possession, no other evidence has been led to prove the *animus possidendi*.

In view of such circumstances, I do not find any illegality and perversity in the judgement and decree rendered by the lower Appellate Court being the last court of fact and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, both the second appeals are dismissed.

(AMIT RAWAL)
JUDGE

May 03, 2019
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No