

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

RSA No. 4378 of 2012(O&M)

Date of decision: 12.3.2019

Karnail Singh Minhas

.....Appellant

VERSUS

Lashkar Singh Minhas and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajinder Goyal, Advocate for the appellant.

None for respondent No.1.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by Lashkar Singh Minhas – respondent No.1 in which Gurmail Singh originally arrayed as defendant No.2 was allowed to be added as plaintiff No.2 claiming declaration of joint ownership in equal share with the defendants and joint possession of kothi No.3306, Sector 32-D, Chandigarh was decreed by the trial Court vide judgment and decree dated 09.01.2009 and appeal preferred by unsuccessful defendant No.1 was dismissed by the Additional District Judge, Chandigarh on 28.07.2012.

The suit property is recorded to be ownership of Sh. Gurdial Singh, father of Lashkar Singh, Gurmail Singh (plaintiffs therein) and that of Karnail Singh Minhas – defendant No.1 (appellant herein), Bikram Singh Minhas – defendant No.3, Sarwan Singh – defendant No.4, Smt. Jeet

Kaur – defendant No.6 and husband of Smt. Parwati Kaur @ Paru, parties in the original suit filed by Lashkar Singh Minhas.

The respondents/plaintiffs claimed equal share in the suit house on the basis of natural succession. The appellant/defendant No.1 contested the claim by alleging that the plaintiffs and other defendants have no right in the suit property as he is the real owner of the property in dispute. Sh. Gurdial Singh was simply benamidar of the appellant and he had no interest in the property in dispute. The plot was purchased in the year 1976 and house was constructed in the year 1979-80 by the appellant. The plaintiffs and other defendants were separate and had been living separately. The appellant has been residing in the disputed property with his father and mother since 1979-80. He also raised preliminary objections inter alia that the suit is not properly valued for the purpose of Court fee and jurisdiction and is barred by limitation.

On the basis of pleadings of the parties, following issues were framed by the Court:-

1. Whether the plaintiffs are the joint owners in joint possession over the suit property, if yes, then to what extent? OPP
2. Whether the plaintiffs are entitled to the relief of declaration as prayed for? OPP
3. Whether the plaintiffs are entitled to the relief of partition of their share in the suit property? OPP
4. Whether the defendant No.1 has become the owner of the suit property through adverse possession? OPD1

5. Whether the deceased late Shri Gurdial Singh was the Benami holder over the suit property, whereas defendant No.1 is the real and actual owner of the suit property? OPD1

5A. Whether the present suit is filed within the period of limitation? OPP

6. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial Court answered issues No.1 and 2 taken up jointly, in favour of the respondents/plaintiffs. Issue No.3 was decided in favour of the plaintiffs and issue No.4 and 5 were answered against the appellant/defendant No.1 and issue No.5A was also determined against the defendants and in favour of the plaintiffs. Eventually, the trial Court decreed the suit to the effect that plaintiff is joint owner with the defendants in equal share and are jointly in possession of kothi No.3306, Sector 32-D, Chandigarh. Defendant No.5 who has already relinquished her share in favour of plaintiff as well as defendants, her share falls equally amongst all the co-owners. As has been noticed hereinbefore, the appeal preferred by unsuccessful defendant No.1 was dismissed by the first Appellate Court by affirming findings of the trial Court without any variance.

Counsel for the appellant has primarily raised two issues namely (1) suit filed by the respondents/plaintiffs without claiming consequential relief of possession is barred by the proviso appended to Section 34 of the Specific Relief Act, 1963 (in short 'the Act'), (2) the suit

filed by the respondents/plaintiffs is barred by limitation as the appellant has become owner of the suit property by way of adverse possession.

To bring home his contention with regard to suit for declaration being not maintainable without seeking consequential relief of possession, counsel has referred to provisions of Section 34 of the Act, reads as follows:-

34. Discretion of court as to declaration of status or right.—Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.”

During the course of hearing, counsel for the appellant has supplied a compendium of documents stated to be part of records of trial Court. Perusal of copy of the plaint dated 29.05.2000 would reveal that in addition to claiming declaration qua joint ownership and joint possession, the plaintiff also claimed partition of the said house. The trial Court framed issue No.3, reads thus:-

“Whether the plaintiffs are entitled to the relief of partition of their share in the suit property? OPP”

Issue No.3 was answered in favour of the plaintiffs with the findings “As such plaintiffs are entitled to the relief of partition of their share in the suit property. Hence, this issue is decided in favour of the plaintiff and as against the defendants”. No doubt, neither in the relief contained in para 18 of the judgment of trial Court nor in the decree drawn by the Court, there is reference to suit of the plaintiffs being decreed for partition of the suit property. However, keeping in view the above that the plaintiffs claimed partition of the said house and a specific issue was framed by the trial Court in this regard which was indeed answered in favour of the plaintiffs, contention raised by counsel for the appellant by referring to copy of the judgment passed by the trial Court is highly misconceived and stands rejected.

This brings the Court to the second issue with regard to the suit being barred by limitation on the premise that the appellant has become owner of the entire property on the basis of adverse possession. As has rightly been held by the trial Court, the appellant has raised mutually inconsistent and destructive pleas. On one hand, he has claimed his ownership by raising a plea that it was benami in the name of Sh. Gurdial Singh (since deceased), his father, and on the other hand, he has claimed his ownership on the basis of adverse possession. This apart, counsel for the appellant has failed to point out any material on record to successfully challenge concurrent findings of the Courts rejecting claim of the appellant that he has become owner of the suit property on the basis of adverse possession. The appellant has claimed adverse possession since the death of his father in the year 1985. It has been proved on record that the appellant remained working as an Officer of the Income Tax Department

in Delhi till 1988 and the same demolishes his plea that he is in adverse possession of the suit property since 1985. Counsel for the appellant has not challenged plea of Lashkar Singh Minhas that he shifted from the suit house due to paucity of accommodation in the year 1997. There is no documentary evidence available on record on the basis whereof the appellant can be heard to say that he claimed himself to be exclusive owner or set up his hostile title to the disadvantage of his co-owners to prove that there was complete ouster of co-owners from the suit property. As such, findings of the Courts negating plea of the appellant with regard to his ownership on the basis of adverse possession neither suffer from an error much less perversity warranting intervention. The moment findings of the Courts on issue No.4 determined against the appellant are affirmed, contention raised by the appellant with regard to suit being barred by limitation becomes merit-less and untenable. There cannot be dispute about settled position in law that there is no limitation for a true owner to seek declaration qua his ownership unless the party in possession of suit property is able to establish that title of the true owner gets extinguished by lapse of time on account of his having become owner on the basis of adverse possession. In view of the above, both the above-said questions are answered against the appellant.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed.

MARCH 12, 2019

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no