

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

**RSA No.5934 of 2018 (O&M)
Date of Decision:26.02.2019**

Khushal Singh

.....Appellant

Versus

Bhajan Kaur and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.K.K.Garg, Advocate
for the applicant-appellant.

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgment and decree dated 20.02.2015, passed by the learned Additional Civil Judge (Sr. Division), Jalalabad (W), as well as judgment and decree dated 21.04.2017, passed by the learned Additional District Judge, Fazilka, whereby suit for declaration as well as for permanent injunction filed by the appellant-plaintiff has been dismissed.

Brief facts necessary for the adjudication of the case are that appellant-plaintiff filed a suit for declaration to the effect that he is the owner in actual, physical and peaceful possession of the land as detailed in the plaint and that the entries in the revenue record in favour of the defendants should be corrected in the name of the appellant-plaintiff in the jamabandies and the khasra girdawaries from the year 1984 onwards.

Consequential perpetual injunction was sought to restrain the defendants from any kind of interference in the plaintiff's possession over the suit property. It was pleaded that the plaintiff had been in actual, physical and peaceful possession of the suit property for more than 28 years i.e. since 1984 and his possession over the suit property was adverse, uninterrupted and hostile to the knowledge of the defendants. No rent or lease money had ever been paid to the defendants for more than 28 years. Suit land was earlier covered with bushes (Sarkandas). Huge amount was spent by the plaintiff on the land and it was made suitable for residence. Suit land was stated to be a 'Gair Mumkin' property. Defendants were never in possession of the suit property, but they now sought to dispossess the plaintiff in an illegal and forcible manner while taking undue advantage of incorrect entries in the revenue record. Hence the suit was filed.

Defendants-respondents no.1 to 5 filed written statements contesting the suit. Defendants no.1 and 2 claimed that the plaintiff had no concern or connection with the ownership or possession of the land in question, which was barren land. Defendant no.2 claimed to be the owner of land measuring 5 ½ marlas along with her husband Tarlok Singh out of the suit property. A residential house was constructed on the said property, which fell within the jurisdiction of Municipal Council bearing property Unit No. 1/73. Provincial Government was earlier the owner of the suit property and defendant no.2 obtained proprietary rights over the land from the Provincial Government after depositing the requisite money. Defendant no.1 alienated her share in the land in favour of defendant no.5. It was pleaded that plaintiff was not an inhabitant of Jalalabad City and resided at

Village Basti Keran Wali and had no concern with the land in question. Claim of the appellant was also denied by defendants no.3 and 4, who filed a separate written statement. It was claimed that the suit property is under the ownership of different persons including defendants no.3 and 4. All the owners are enjoying the possession of their respective shares in the suit land in the shape of residential houses etc.

Defendants no.3 and 4 stated that they purchased land measuring 7 Marlas out of the suit property with specific boundaries from Jaswant Singh and Bhajan Kaur vide registered sale deed dated 15.07.2012. A house was constructed on the land by them in which they were residing. Mutation was thus rightly entered in the revenue record in their favour. False and concocted version, it was submitted was put-forth by the plaintiff.

Defendant no.5 in his written statement claimed that Tehsil Office, Jalalabad was located over the suit property earlier. After it was shifted to the new complex, the old building was used as Patwarkhana. Defendant no.5 claimed to be a *bona fide* purchaser of land measuring 7 Marlas out of the suit property. Defendant no.5 purchased the said land from Bhajan Kaur (defendant no.1) vide registered sale deed dated 10.10.2011. Possession of the said property was handed over to defendant no.5 at the time of execution of the sale deed. Mutation was correctly entered in his favour. The vendor-Bhajan Kaur, was stated to have purchased the land from Gurdial Singh, who in turn had got the same from the Provincial Government. Allotment certificate in favour of Gurdial Singh was issued on 27.01.1981. Thus, all the defendants prayed for dismissal of the plaintiff's suit.

Replications were filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to the relief of declaration as prayed for?OPP
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?OPP
3. Whether the plaintiffs suit in the present form is not maintainable?OPD
4. Whether the plaintiff has got no cause of action and locus standi to institute the present suit?OPD
5. Whether the plaintiff's suit is bad for non-joinder of the necessary parties?OPD
6. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court while observing that it was not open for the plaintiff to have based his suit on the edifice of adverse possession, dismissed the suit vide impugned judgement and decree dated 20.02.2015. It was further observed that no injunction could be granted against a true owner. Suit filed by the plaintiff-appellant was accordingly dismissed.

Appeal preferred by the plaintiff was also dismissed by the learned Additional District Judge, Fazilka, vide impugned judgement and decree dated 21.04.2017.

Aggrieved therefrom, present appeal has been filed by the appellant-plaintiff.

Learned counsel for the appellant vehemently argues that even if the relief of declaration as sought by the appellant could not be granted, permanent injunction protecting the possession of the appellant should be afforded. The appellant, it is submitted has successfully proved his possession over the suit property, therefore the same should at-least have

been protected by both the learned Courts below. It is thus prayed that this appeal be allowed and both the impugned judgments and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the plaintiff-appellant be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

It is a matter of record that the appellant-plaintiff has laid the foundation of his case on the ground that he has been in possession of the property in question for more than 28 years and his possession over the said property is adverse, uninterrupted and hostile to the knowledge of the defendants. Entries in the revenue records are claimed to be incorrect. It is a settled position of law that no person can seek a declaration in respect to ownership of the property by way of adverse possession. Reference can gainfully be made to the judgement of this Court in **Jeet Singh deceased represented by his L.Rs Varkha Kaur and others Vs. Ranjeet Singh and others 2017(5) R.C.R (Civil) 41**, wherein it has been held that a suit for declaration claiming ownership on the basis of adverse possession is not maintainable. Such a plea is available only as a defence. Primary relief in the said case was also for said declaration. It has been argued by learned counsel that possession of the plaintiff-appellant was proved, therefore, his possession should have been protected while affording the relief of permanent injunction in his favour.

At this stage, it is pertinent to note that the plaintiff has instituted this suit seeking declaration to the effect that he is the owner in possession of the suit property on the basis of adverse possession and he has

prayed for the consequential relief of perpetual injunction against the defendants. It is not in dispute that the plaintiff had earlier filed an application for correction of khasra girdawri of the suit property in his favour. Said application was dismissed by the Assistant Collector, Jalalabad on 22.08.2013 (Annexure D-2) on the ground that old Teshil Complex is located on the property in question. Civil Suit no.211-1 of 23.12.2011 titled as Khushal Singh Vs. Satnam Singh and others was earlier filed against the defendants. Attested photocopy of the said civil suit is available on record as Ex.DD. The said suit was dismissed in default on 20.05.2013. As per Ex.DD, plaintiff in the said suit had claimed himself to be in peaceful, physical possession of land measuring 6 Kanal 12 Marlas out of land measuring 22 Kanals in Rectangle No. 467/2 and that too under the joint ownership of defendants no.2 to 5 therein, who are admittedly defendants no.3 to 5 in the present suit. Plaintiff further pleaded in that suit that he purchased land measuring 6 Kanal 12 Marlas from one Gurdeep Singh son of Amir Singh vide affidavit dated 09.07.2009.

In the present suit, plaintiff claims to be in open, hostile and continuous possession of the entire land measuring 22 Kanals for the past 28 years, whereas, in the earlier suit, he claimed to have purchased and come in possession of land measuring 6 Kanal 12 Marlas out of total land measuring 22 Kanals much later. In this view of the matter, learned trial Court has rightly observed that the plaintiff has not revealed true and material facts. Learned Additional District Judge, Fazilka, has discussed the evidence threadbare to affirm the conclusion that the plaintiff is not entitled to the relief of declaration or permanent injunction as prayed for. Reference has

also been made to a copy of the application for Ration Card of the plaintiff describing his village as Hazara Ram Singh Wala (Ex.D-3). In such a situation, it is rightly held by both the learned Courts below that the appellant-plaintiff has failed to prove his case.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record and do not suffer from any illegality, infirmity or perversity which calls for any interference by this Court.

No other argument has been raised.

There is an application for permission to make good the deficiency in Court fee. Deficient court fees stands deposited, though after the stipulated time. In view of the facts and circumstances of the case, time to affix the same is extended till then. There is a delay of 280 days in re-filing of this appeal. As the matter has been decided on merits, decision on said applications, is rendered academic. Both applications are disposed of accordingly.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decrees dated 20.02.2015 and 21.04.2017 passed by the learned Additional Civil Judge (Sr. Division) Jalalabad (West) and learned Additional District Judge, Fazilka, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

26.02.2019

s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.