

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

Subhash Chander TuilAppellant

Sachkhand Nanak Dham **....Respondent**

Present: Mr. B.B.S. Randhawa, Advocate
for the appellant.

Mr. Jagjit Singh, Advocate
for the caveator/respondent.

RAJ MOHAN SINGH, J.

CM No.2734-C of 2019

For the reasons mentioned in the application, the same is allowed. Delay of 22 days in re-filing the present appeal is condoned.

RSA No.1128 of 2019(O&M)

[1]. Defendant is in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for possession of the house.

[2]. Plaintiff filed a suit for possession of house marked by letters 'ABCD' in the site plan having defined dimensions.

Plaintiff pleaded that it was a registered society. The house was owned and possessed by one Sudarshan Kumar Tuli son of Hari Ram Tuli, who was real brother of defendant. Sudarshan Kumar Tuli sold the plot underneath the house in dispute in favour of the plaintiff vide registered sale deed dated 23.10.2008. He also sold the *malba* in favour of the plaintiff for a consideration of Rs.1,50,000/- vide separate receipt dated 23.10.2008. The possession of the house was also delivered to the plaintiff. The defendant illegally occupied the house in question and hence the suit.

[3]. Defendant contested the suit by denying that the house was owned and possessed by Sudarshan Kumar Tuili i.e. his brother. Defendant claimed that he was owner in possession of the house. He along with his father and brother Sudarshan Kumar Tuli had constituted joint Hindu family coparcenary with Hari Ram as its *Karta*. Father of the parties was running a cloth merchant shop business in the name and style of M/s Hari Ram & Sons, Chakri Bazar, Batala. Defendant was associated with his father in the said business. Sudarshan Kumar Tuli was student at that time having no source of income. The suit property was acquired from the funds of joint Hindu family coparcenary. Sudarshan Kumar Tuli got employment in the Bank and stayed in the suit property only for short period in the

year 1979-80. Thereafter, he was transferred from one place to another outside Batala and he had separated from the joint Hindu family after taking his due share. Defendant and his father raised the construction over the house and shifted their residence in the suit property. The sale deed dated 23.10.2008 was denied altogether. Possession remained with the defendant for the last more than 38 years.

[4]. Both the parties went to the trial on definite issues. Thereafter, at the time of final arguments, it came to the notice of the trial Court that issues No.1 and 2 were not properly framed and certain other issues were left out. Additional issues No.2-A and 2-B were framed to the following effect:-

“2-A. *Whether the property in dispute is part of Hindu Joint Family Co-parcenary property? OPD*

2-B. *Whether defendant is in adverse possession of the suit property, if so, its effects? OPD”*

[5]. The trial Court after assessing the intensity of the evidence led by the parties collectively held under issues No.1, 2-A and 2-B that the suit property was purchased by the plaintiff from Sudarshan Kumar Tuli vide registered sale deed dated 23.10.2008 (Ex.P-2) and even *malba* was also purchased by the plaintiff vide separate receipt executed on 23.10.2008 for a consideration of Rs.1,50,000/-. On the said date, possession of the suit property was also delivered to the plaintiff as an absolute owner, however later on defendant illegally

occupied the house in question. No doubt, the factum of possession of the suit property by Sudarshan Kumar Tuli was denied by the defendant, but it was evasively denied or half heartedly admitted that the suit property was purchased in the name of Sudarshan Kumar Tuli. Though it was alleged that the property was purchased out of Hindu joint family funds. In order to prove existence of Hindu joint family and its joint business in the name of M/s Hari Ram & Sons, DW-2 Jagdish Raj was examined. Though the aforesaid witness deposed in favour of the defendant, but in the cross-examination the witness stated that he is not having any document to show that the property in question was owned by the defendant or his father.

[6]. It was further held by the trial Court that the property was having khasra numbers in the revenue record and the ownership could have been proved by leading evidence in the form of revenue record, but no such evidence was led by the defendant to show that the property was part of Hindu joint family property. In the examination-in-chief it was alleged by the witness that Subhash Chander was owner of the property, but in cross-examination the witness submitted that he did not know whether the property was owned by Subhash Chander or not. He even admitted that even as per *jamabandi* Ex.D-5, Sudarshan Kumar Tuli was owner of the property and he was

recorded as such in the *jamabandi*. The testimony of DW-2 was of no avail to the defendant. The title set up by the defendant viz.-a-viz. the suit property was in contrast/conflict with issue No.2-B. Hindu joint family was not proved. Ownership of Sudarshan Kumar Tuli was proved to the hilt and the sale deed executed by him in favour of the plaintiff was held to be a valid transaction. In the light of findings collectively recorded under issues No.1, 2-A and 2-B, the trial Court decreed the suit.

[7]. The decision rendered by the trial Court was upheld by the lower Appellate Court.

[8]. I have considered the submissions made by learned counsel for the parties.

[9]. Plea of title viz.-a-viz. plea of adverse possession cannot go simultaneously. Plea of adverse possession presupposes admission of ownership in favour of the opposite party. Plea of adverse possession has to be appreciated in the light of facts on record and the legal position of the subject matter. A mere possession or permissive possession does not demonstrate spectrum of adverse possession. In order to claim adverse possession, the defendant must prove that his possession is '*nec vi, nec clam, nec precario*', i.e. peaceful, open and continuous. The possession over the suit property must be actual, open, notorious, exclusive and continuous for a

requisite time as provided in law.

[10]. In **Karnataka Board Wakf vs. Government of India, 2004(2) R.C.R. (Civil) 702**, it was held that the adverse possession is hostile possession by clearly asserting hostile title in denial of the title of the true owner. A person claiming adverse possession must prove that his possession is '*nec vi, nec clam, nec precario*' i.e. peaceful, open and continuous.' The possession must be adequate in continuity, in publicity and in extent to show that the possession is adverse to the true owner and it must start with a wrongful dispossession of the original owner and is actual, visible, exclusive, hostile and continued over the statutory period.

[11]. Plea of adverse possession is not pure question of law, rather the same is mixed question of law and facts depending upon the plea in the pleadings and evidence led by the parties. A person, who claims adverse possession must show to the Court that on what date he came into possession. He must show that what was the nature of his possession and whether the factum of possession was known to the opposite parties. He has to prove his continuous possession in terms of time, i.e how long the possession has continued and the same was open and undisturbed. Plea of adverse possession has no equities, rather this right has some instinct of piratical rights. All the aforesaid

ingredients are required to be proved with reference to the evidence on record. Defendant has not proved the aforesaid ingredients in order to prove his adverse possession except to take plea that too at the argument stage. The trial Court proceeded to frame additional issues at the final stage of arguments, still the defendant could not prove any such material to establish his hostile possession on the basis of aforesaid ingredients.

[12]. For the reasons recorded hereinabove, the findings recorded by the Courts below cannot be said to perverse or the result of any misreading of evidence. No question of law worth cognizance is involved in this appeal, the same is accordingly dismissed.

May 22, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No