

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

RSA No. 1518 of 2018 (O&M)

Date of decision : March 11, 2019

Hardeep Singh

.....Appellant

Versus

Malkiat Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Balbir Kumar Saini, Advocate
for the appellant.

LISA GILL, J.

This appeal has been filed by the appellant – plaintiff challenging judgment and decree dated 11.03.2015 passed by the learned Civil Judge (Junior Division) Amritsar as well as judgment and decree dated 03.10.2017 passed by the learned Additional District Judge, Amritsar.

Appellant – plaintiff filed a suit for declaration to the effect that he has become owner of the land as described in the plaint by way of adverse possession as his possession over the said land was open, hostile continuous, adverse and to the knowledge of the whole world. A further declaration is sought to the effect that statement dated 16.01.2008 allegedly made by the plaintiff alongwith his counsel in the suit titled 'Hardeep Singh versus Malkiat Singh etc.' regarding not pressing for the relief of declaration claimed in the said suit was incorrect, without consent, approval or instructions of the plaintiff, hence not binding upon him and is liable to be ignored. It is pleaded that the plaintiff is in possession of the suit property for more than twenty years and his possession over the same was open, hostile, continuous, peaceful, uninterrupted, adverse and to the knowledge of the whole world including the defendants who had no right, title or

interest in the same. It is further stated that the plaintiff had become owner of the suit property by way of adverse possession. He was not paying any rent to anyone in respect of the suit property. Possession of the plaintiff it is averred, became adverse from 1989 onwards till date. Earlier the plaintiff had filed a suit for permanent injunction restraining the defendants from interfering in the peaceful possession of the suit property and from dispossession him forcibly or illegally from the same. This suit was decreed in the plaintiff's favour vide judgment and decree dated 27.01.2005. Plaintiff, it is submitted, requested the defendants to admit that he is the owner in possession of the suit land on the basis of adverse possession but the defendants refused to accept the same and tried to interfere in his peaceful possession and also threatened to alienate the suit property in spite of the decree dated 27.01.2005 for permanent injunction in the plaintiff's favour. Plaintiff then filed a suit for declaration that he had become owner of the suit property by way of adverse possession with consequential relief of permanent injunction titled 'Hardeep Singh versus Malkiat Singh etc.'. In the month of January, 2008, the plaintiff, it is pleaded, appeared in the Court of the civil Judge (Jr. Division) Amritsar alongwith his counsel. Plaintiff's thumb impression was taken on some statement allegedly made by the plaintiff to the effect that he did not press the issue regarding relief of declaration pressed only the issue regarding permanent injunction. This statement was countersigned by the plaintiff's counsel. Plaintiff was told on 17.01.2018 by his counsel that the suit was decreed in his favour by the Court. The plaintiff, it is further pleaded, is a totally illiterate person and has no knowledge of English language in which the said statement was recorded and his thumb impression taken without apprising him of the contents of the

statement. Thumb impression was appended by the plaintiff at the asking of his counsel. Statement was not read over to him or explained in Punjabi to him by anyone. An appeal was filed by defendants No. 1 to 3 against judgment and decree dated 17.01.2008 in which the plaintiff put in appearance. It is at that time that the counsel then engaged by the plaintiff revealed that it was only the decree for permanent injunction which has passed in his favour and alleged statement dated 16.01.2008 came to his knowledge. The plaintiff, it is alleged, never instructed his counsel to withdraw the relief of declaration nor he himself made any such statement in Court as he never intended to withdraw this relief which was infact the main relief claimed whereas he already had the decree of permanent injunction dated 27.01.2005 in his hands. As the statement was not made voluntarily by the plaintiff, therefore, the same was not binding upon him. Hence, the present suit was, accordingly, filed.

Notice was served upon the defendants but they did not appear and they were proceeded against exparte vide order dated 25.11.2014.

The plaintiff led evidence and stepped in the witness box as PW1. PW2 Anuj Bhatia was also examined. Evidence of the plaintiffs was closed by order on 24.09.2014.

Learned trial Court on considering the evidence on record, facts and circumstances of the case concluded that the plea of adverse possession can only be used as a weapon to defend and the appellant – plaintiff is not entitled to a decree for declaration on the ground that he was in adverse possession of the property in question. It was further observed that the plaintiff was unable to show under what circumstances and in what manner statement dated 16.01.2008 was wrongly recorded and thumb marked by

him. Therefore, plaintiff was not found entitled to any of the reliefs as claimed. Suit was, accordingly, dismissed. Appeal filed by the plaintiff was also dismissed by the learned Additional District Judge, Amritsar vide judgment and decree dated 03.10.2007. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that the appellant has proved himself to be in possession of the property in dispute for more than twenty years since the institution of the suit in question. His possession over the property is open, hostile and adverse to the owners. Moreover, the statement made on behalf of the appellant in the earlier suit on 16.01.2008 by the appellant's counsel in regard to not pressing the relief for declaration in the earlier suit is incorrect, without consent, approval or instructions of the appellant, hence, not binding upon him and the same cannot be treated to be res judicata, preventing the appellant from raising this plea again. Proper issues in accordance with Order 14 CPC were not framed leading to grave prejudice to the appellant. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in **Krishnamurthy S. Setlur Dead by LRs versus O.V. Narasimha Setty and others** 2007 (3) SCC 569 and **Pratima Sinha and others versus Shashi Kumar Narain Sinha and others** 2004(13) SCC 599. It is further contended that none has ever claimed title to the suit property till the year 2007 and the defendants were proceeded against exparte, therefore, the suit should necessarily have been decreed in favour of the plaintiff – appellant. It is, thus, prayed that this appeal be allowed, judgment and decree dated 11.03.2015 passed by the learned Civil Judge (Junior Division) Amritsar as well as judgment and decree dated 03.10.2017 passed by the learned Additional District Judge,

Amritsar be set aside and suit filed by the appellant be decreed throughout.

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

It is a matter of record that foundation of the appellant's case squarely rests on the ground that he is in adverse possession of the property in question and his possession is hostile, uninterrupted and continuous and it is in this situation that he is seeking a declaration to the effect that he is the owner in possession of the suit property. It is further a matter of record that decree dated 27.01.2005 for permanent injunction was granted in his favour. Merely because the plaintiff continued to be in possession of the property in question thereafter as well is not a ground for declaration as sought by the appellant. The Hon'ble Supreme Court in **Gurudwara Sahib versus Gram Panchayat Village Sirthala and another 2014 (1) SCC 669** held that a person in adverse possession of property cannot seek a declaration that his adverse possession has matured into ownership. It is observed that:

“ Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

The appellant's evidence was closed by order on 24.09.2014. There is nothing on record to show that this order was ever challenged by the plaintiff. Merely because the plaintiff – appellant has continued to be in possession, he cannot be entitled to any kind of relief merely on this ground as has been vehemently urged by learned counsel for the appellant.

Reference can gainfully be made to the judgments of this Court in **Joginder**

Kaur versus Gurbachan Kaur and others 2013 (3) RCR (Civil) 685 and Jeet Singh deceased represented by his LRs Varkha Kaur and others versus Ranjeet Singh and others 2017 (5) RCR (Civil) 41.

The judgment of the Hon'ble Supreme Court in **Krishnamurthy's** case (supra) is not applicable to the facts and circumstances of the case. **Krishnamurthy's** case (supra) was a matter in which there was protracted litigation between the parties, starting from a suit filed by one H.R. Narayana Iyengar who claimed to be the owner of the suit property having purchased the same from one Kalyana Sundram Iyer. It was concluded that the entire litigation was not taken into consideration and the matter was remanded by the Hon'ble Supreme Court to the High Court for a decision afresh after taking into consideration the entire facts and circumstances. There is a specific observation therein that the reasoning, if any, given in the decision would not be read as a conclusion on merits.

Furthermore, merely because the defendants have been proceeded against *ex parte* cannot be a ground for decreeing the suit in the plaintiff's favour. Needless to say the plaintiff has to stand on his own legs and prove case. Similarly, the ground raised by learned counsel for the appellant that proper issues were not framed by the learned courts below is of no avail to the appellant in the peculiar facts and circumstances of the case. The plaintiff – appellant was very well alive to the controversy in hand, therefore, it cannot be concluded that any prejudice has been caused to him due to non-framing of the said issues though it is relevant to note that it would definitely be advisable to have framed the specific issues in this respect by the learned courts below. The matter could be remanded only on this ground but when edifice of case itself is on an incorrect, unsustainable

foundation it does not warrant remand of the matter to the learned trial Court for a decision afresh in the peculiar facts and circumstances of the case and would merely lead to wastage of time. However, as noted above in the peculiar facts and circumstances of the case, I do not find this to be a ground to remand the matter for a decision afresh.

Another grievance raised by the appellant is that he never suffered statement dated 16.01.2008 and the same is not binding upon him, therefore, the earlier suit cannot act as res judicata against him. In this respect, it is rightly observed by both the learned courts below that there is no evidence on record to show as to under what circumstances statement dated 16.01.2008 was wrongly recorded, especially when the counsel appearing on behalf of a party is naturally presumed to be representing him in Court. There is no such averment by the appellant that any action was taken by him against the counsel or that he took any steps in regard to the wrong recording of his statement except filing of the present suit for declaration. Apart from the fact, these observations have been correctly made, it is reiterated that a suit seeking a declaration on the basis of adverse possession is not maintainable. Therefore, the said relief is indeed inconsequential. Learned counsel for the appellant is unable to point out any question of law much less a substantial question of law which is involved for consideration in this appeal.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated

11.03.2015 passed by the learned Civil Judge (Junior Division) Amritsar as well as judgment and decree dated 03.10.2017 passed by the learned Additional District Judge, Amritsar, which calls for any interference by this Court in second appeal.

No other argument has been addressed.

There is a delay of 49 days in re-filing of the present appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in re-filing of this appeal has been rendered academic. Application is, accordingly, disposed of.

Accordingly, this appeal is dismissed with no order as to costs.

March 11, 2019
rts

(Lisa Gill)
Judge

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