

S.No.102

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

RSA No.1102 of 2017 (O&M)

Date of Decision:20.01.2020

Narsi and others Appellants

Vs.

Babu Ram and others Respondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Ashish Aggarwal, Senior Advocate with
 Mr. Ritesh Tomar, Advocate for the appellants.

Rajbir Sehrawat, J.(Oral)

This is the plaintiff's second appeal challenging the concurrent findings recorded by both the Courts below, whereby, the suit filed by the plaintiff- appellants herein, for declaring the mutation entered in favour of the defendants in the year 1928; and the subsequent entries; as null and void; with the further relief of possession, has been dismissed.

For the convenience, the parties herein are being referred as plaintiffs and the defendants as they were described in the original suit.

The suit in the present case was filed by the plaintiffs asserting that they are the grand-children of Telu Ram and the children of Lachhi Ram. Likewise, all the defendants are also related to each other. They are the grandsons of Babu Ram, Suresh Kumar and Jaggu. It was further asserted that Telu Ram died in the year 1981 and the property of Telu Ram was inherited by the father of the plaintiffs, namely, Lachhi Ram. After the

death of Lachhi Ram, in the year 1990, the plaintiffs inherited the land described in para No.4 of the plaint; and situated in the revenue estate of Village Ranwar; District Karnal. In the year 1921, even the share of one Parsada was inherited by grandfather of the plaintiff and the mutation No.254 dated 19.01.1921 was entered in this regard in favour of their grandfather Telu. But later on, this share of Telu was wrongly transferred in the name of Jaggu, the predecessor-in-interest of the defendant/respondents, vide mutation No.451 dated 26.11.1928. Telu had never transferred his property to Jaggu by sale or any other transfer of title deed. The said mutation was got sanctioned by Jaggu in connivance with revenue officials. Telu never came to know of this mutation during his lifetime; as he had shifted from his village. Rather, he had given the land to Jaggu as a tenant on payment of rent by batai. After the death of Telu, the rent by way of batai was paid to the father of the plaintiffs; and after the death of their father, the same was being paid to plaintiff/ appellants. However, after the death of Jaggu, suit land had been wrongly mutated in the name of defendant Jai Bhagwan being his legal heirs. Accordingly, the consequent entries in jamabandi to this effect are illegal. However, since June 2007, the defendants had stopped making payment of rent by batai and they had started claiming to be owner in possession of the suit land. Thereafter, the plaintiffs inspected the record and came to know about the fraud in entering Mutation No.451 dated 26.11.1928. The plaintiffs asked the defendant/respondents to concede their claim, however, they refused. Hence, the necessity for filing the suit challenging the above-said mutation No.451 dated 26.11.1928 in the name of Jaggu, the predecessor-in-interest

defendants, as well as, the subsequent entries in the jamabandies, and also the consequent decree for possession of the suit land, has arisen.

To dispute the assertions made by the plaintiffs, the defendants filed the written statement claiming that the plaintiffs are not even related to Telu. Telu was a Gaur Brahman by caste, whereas, the plaintiff- appellants are Nai by caste. The suit is barred by limitation. The defendants have been in possession of the suit land for more than 80 years as owners and have perfected their title over the suit land even by prescription and lapse of time by way of adverse possession. However, it was further pleaded that the original owner of the land Telu Ram was unmarried. He owned property in Village Ranwar and Dadupur which was sold by him to Jaggu in the year 1928 for a sale consideration of Rs.100/-. Accordingly, the mutation was sanctioned in this regard in the name of predecessor-in-interest of the defendants, namely, Jaggu. It was further pleaded that there is absolutely no fraud in the transaction. The mutation was duly sanctioned by the revenue authorities. On merits, it was denied that the defendants or their predecessor-in-interest were ever introduced as tenant over the suit land or that they ever paid any rent or batai, either to the plaintiffs or to their predecessor-in-interest. Besides this, it was also pleaded that the defendants had even further executed the sale deeds of the property coming to them from Jaggu through the above-said impugned mutation, and they have also been raising loans from the Banks on this property. Therefore, the defendants have been exercising their rights of ownership over the land in question to the knowledge of one and all. Hence, the suit filed by the plaintiffs was not at all maintainable, besides being hopelessly time barred.

The parties led their respective evidence. The plaintiffs examined five witnesses; besides placing on record the jamabandies from the year 1972-73 upto the year 2002-2003. They also placed on record the jamabandies for the year 1920-21 and the mutations. Likewise, the defendants led their evidence.

After appreciating the evidence, the trial Court dismissed the suit filed by the plaintiffs. Being aggrieved against the said judgment and decree passed by the trial Court, the plaintiffs preferred appeal before the Lower Appellate Court. However, the same was also dismissed. Hence, the present appeal has been preferred.

While arguing the case, learned counsel for the plaintiff/appellants have raised two fold arguments. Firstly, it is submitted that both the Courts have gone wrong in law in holding the suit filed by the plaintiffs as time barred. It is submitted by the counsel that limitation in case of suit for possession would not start running unless the possession of the other side has become adverse. In support of his argument, it is contended by the counsel that, in fact, the possession of the defendants never became hostile because they were inducted as tenants and they were regularly paying rent upto June 2007. Their possession was permissive in nature, and not hostile. Therefore, there was no legal basis for the Court below to dismiss the suit filed by the plaintiffs on the ground of limitation. The second argument raised by counsel for the appellants is that both the Courts below have given unnecessary value to the presence of Telu at the time of entering of the impugned mutation in favour of Jaggu, as shown in the revenue record. It is contended by the counsel for the appellants that since the said entry is not

based on any statement on oath by Telu, therefore, the said entry cannot be read in evidence for the purpose of showing the consent of Telu Ram, for the entry of mutation in favour of Jaggu. The counsel for the appellant has relied upon judgment of this Court rendered in **1994(3) RRR 157 – Denat Kaur alias Sant Kaur v. Harbans Kaur** in this regard. Beyond the above said two points, it has also been argued by the counsel that since the defendants have taken the plea of adverse possession, therefore, the said plea was mutually destructive to their plea of ownership based on the alleged sale by Telu in favour of Jaggu. He has relied upon another judgment of this Court in **2006(2) PLJ 692 – Ram Niwas and another v. Roshan and others**, in support of this contention.

Having heard learned counsel for the appellants and having perused the record, this Court does not find any substance in the argument raised by counsel for the appellants. Although the learned counsel for the appellants have tried to refute the findings recorded by the Courts below; by submitting that the defendants being tenants under the plaintiffs, their possession never became adverse to the title of the plaintiffs, therefore, the limitation never even started running against them till 2007. However, this plea is not substantiated even remotely by the appellants; by leading any evidence to show that the defendants were ever inducted tenants over the suit land. The plaintiffs have not led any evidence whatsoever qua induction of Jaggu or anyone of his descendants as tenants over the suit land. No evidence has been led on file to show that the rent was ever paid by the defendants, either to the plaintiffs or to their predecessor-in-interest.

Hence, there is nothing on record to take the fact in favour of the appellant

that the land was under tenancy with the defendants. If the plea of tenancy is kept aside then, admittedly, the land is being shown in possession of the defendants right from the year 1928. Even the evidence placed on record by the plaintiffs themselves shows the said fact, at least from the year 1971 to 1972. Therefore, there is nothing on record even to assume that the plaintiffs were not aware of the possession of the other side; or that there was any reason which could have stopped the possession of the defendants from being adverse to the plaintiffs, even if anything else is not proved by the defendants. Hence, the limitation in the case have to start, at least, after 12 years from the year 1928. Hence, both the Courts below have not committed any illegality in recording a finding that the suit filed by the plaintiffs is time-barred.

This Court also does not find any substance in the argument of learned counsel for the appellants that the judgments and decrees passed by the Court below are bad, because they are based upon the un-sworn statement of Telu at the time of entering of the impugned mutation. The Courts below have not relied upon any statement of Telu as such. Rather; the Courts below have appreciated the fact that the mutation was entered in the presence of Telu, from whom their predecessor Jaggu had purchased the suit land. Hence, the argument that since the statement of Telu was without any oath and, therefore, could not be made basis by the Courts below is totally irrelevant. It is not even denied by counsel for the appellants that the revenue record of the time, when the impugned mutation was entered, speaks about the presence of Telu. This document; being much older than 30 years, can very well be read into evidence, subject to right of rebuttal to

the plaintiffs. However, the plaintiffs have not led any evidence, whatsoever, to prove the fact that the owner Telu was not present at the time of entry of the said mutation. Hence, this argument is liable to be rejected. Although counsel for the appellants has relied upon judgment in case of **Denat Kaur alias Sant Kaur's case (supra)**, however, that judgment is entirely distinguishable on the facts of this case. In that case, the person to whom such statement was attributed herself had challenged the factum of having made any such statement. Hence, the Court had observed that a statement without oath may not bound her. In the present case, Telu, whose presence is shown at the time of mutation never challenged the mutation himself.

One more argument has also been raised by counsel for the appellants that the plea of ownership by title and that of adverse possession are mutually destructive and, hence, the defence of the defendants have to be taken as smashed on this count only. However, a bare perusal of the record and the pleadings show that the plea of adverseness of the possession has not been taken by the defendants to stake claim to title on this basis. The same has been taken only to show long possession over the suit property, in support of their assertion of title, which they claim on the basis of alleged oral sale. Since the sale is not through a written document, therefore, there is nothing wrong if the defendants have taken the plea of length of their established possession to lend support to their case of title on the basis of oral agreement, which admittedly, was not even required to be registered at the relevant time; under the law relating to registration. Still further, there is legal provision of starting of the limitation for suit for possession from the

date, when the possession of the defendants become adverse to plaintiff. For that limited purpose as well, the plea of adverseness of the possession has been rightly raised by the defendants to show that the suit filed by the plaintiffs was time barred. Needless to say that the plaintiffs themselves have pleaded that they knew of possession of defendants. Although they pleaded tenancy with defendants but they have failed to lead any evidence to that effect. Hence, the question of the plea of ownership and the adverse possession being mutual destructive, is not even involved in the present case. Accordingly, the judgment relied upon by counsel for the appellants in this regard as well; is not applicable in the facts of the present case.

No other argument was raised.

In view of the above, finding no ground to interfere with the concurrent findings of facts, recorded by the Court below, the present appeal is dismissed.

January 20, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No