

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

1. RSA-1631-2017 (O&M)
Date of decision : 16.03.2020

Narinder Kumar

...Appellant

Versus

State of Haryana through Executive Engineer

...Respondent

2. RSA-1690-2017 (O&M)
Date of decision : 16.03.2020

Mahinder Singh

...Appellant

Versus

State of Haryana through Executive Engineer

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Govind Chauhan, Advocate for the appellant.

Mr. Siddharth Sanwaria, DAG, Haryana.

ANIL KSHETARPAL, J.

This judgment shall dispose of two appeals bearing RSA Nos.1631 and 1690 of 2017. Although, both the appeals are arising from different suits filed for the grant of identical reliefs, however, the issue involved in both the appeals is also common.

Learned counsel for the parties who are also common agree that

both the appeals can be conveniently disposed of by a common judgment. For convenience, the facts are being considered from RSA No.1631 of 2017 filed by Narinder Kumar.

The issue which arises for consideration is “whether the plaintiff-appellant can be granted any relief in the facts and circumstances of the present case?”.

The State Government constructed a pucca road from Village Barsat to Village Jamalpur in the year 1975-76. In the year 2012, two identical suits were filed by the appellants for possession with consequential relief of mandatory injunction and with a further relief of permanent injunction. The prayer made in the plaint is extracted as under:-

“It is, therefore, prayed that a decree for possession of the land about 13 ½ marlas, which is part of land detailed in para no.1 of the plaint above, with consequential relief a decree for mandatory injunction thereby directing the defendants to pay compensation to the plaintiff for their illegal possession, use and occupation charges of the land about 13 ½ marlas which is part of land fully detailed in para no.1 of the plaint above and further a decree for permanent injunction restraining the defendants from further encroaching the land of the plaintiff detailed in para no.1 of the plaint, illegally and forcibly or in any manner, may kindly be passed in favour of the plaintiff and against the defendants, with costs.

Any other relief to which this Hon'ble Court deems fit and proper may also be awarded to the plaintiff.”

The defendant contested the suit by claiming that the suit is barred by time. The mandatory notice under Section 80 CPC has not been

given. It was further asserted that the State of Haryana had constructed the road in public interest, for the welfare of the residents with the consent of the landowners and that the plaintiff had never made any request for compensation. It was claimed that the State of Haryana is holding an uninterrupted possession of the said land for more than 36 years.

After framing of the following issues, the parties were permitted to lead evidence:-

- “1. Whether the plaintiff is entitled to a decree for possession as prayed for?OPP.*
- 2. If issue no.1 is proved, whether the plaintiff is entitled for the relief of mandatory injunction and permanent injunction as prayed for?OPP.*
- 3. Whether the suit of the plaintiff is not maintainable in the present form?OPD.*
- 4. Whether no notice under Section 80 CPC has been served upon the defendants?OPD.*
- 5. Whether the suit of the plaintiff is barred by law of limitation?OPD*
- 6. Relief.”*

The plaintiff appeared in evidence in support of his case. In cross-examination, he stated that "it is correct that when I was born, a road was already laid near our land. It is wrong to suggest that road from Barsat to Jamalpur was laid in public interest, for our welfare and with the consent of the landowners. It is correct that my father or our predecessor never requested for payment of compensation to the Government. It is also correct that I did not serve a notice under Section 80 CPC before filing the suit. It is correct that 38 years ago, a road was constructed, my father or my

predecessor never raised any objection. Volunteered I do not know if it was objected to or not."

On the other hand, an official from PWD (B&D) Department, appeared in evidence and claimed that the road was constructed in the public interest, for the welfare of the residents with the consent of the landowners.

Learned trial Court, on appreciation of evidence, decreed the suit, whereas learned First Appellate Court by two separate judgments of identical date, accepted the appeals and reversed the finding of the trial Court.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below alongwith the requisitioned record.

Learned counsel appearing on behalf of the appellants, in both the appeals, has submitted that the plaintiffs in both the suits are owners of the property in dispute and, therefore, their suit can not be dismissed by the Court as the State is not entitled to defend the suit on the ground that the State has become owner by way of adverse possession. He submitted that the State, being a welfare State, is not entitled to claim ownership by prescription of time claiming adverse possession. He further drew the attention of the Court to Article 65 of the Schedule attached to the Limitation Act, 1963 to contend that the suit filed by the owner on the basis of title cannot be dismissed on the ground that it is barred by limitation unless the opposite party proves that its possession became adverse and thereafter a period of 12 years have elapsed.

On the other hand, learned counsel appearing on behalf of the State, has submitted that the suit filed by the plaintiff was barred by limitation and the road was laid/constructed with the consent of the landowners at that time.

This Court has critically analyzed the arguments of learned counsel for both the parties and proceeds to decide these appeals.

In view of the evidence as noticed above, it is apparent that the plaintiff had filed a suit after a period of 34/35 years when the road was constructed/laid by the Government. No doubt, it is the plea of the plaintiffs that such road was laid without their knowledge, however, such evidence cannot be accepted. If a road has been laid by taking some land of a landowner (particularly a farmer who is a resident of the village), it cannot be expected that he does not know that the road has been laid after taking over some part of the land. It is not the case of any of the party that a road was already existing and the width of the road was increased. It is a case of laying down a new road. In such circumstances, a cultivator cannot be expected to be oblivious of the fact that the road has been laid. Further, when the plaintiff appeared in evidence, he admitted that from the time of his birth, he has been seeing/witnessing the road that has been laid. When the plaintiff appeared in evidence, he was 30 years of age, therefore, it is safe to conclude that the road was laid even before the birth of the plaintiff. The plaintiff has admitted that his father who was the previous owner or his predecessor(s) never claimed any amount towards compensation for the land which has been utilized for laying down the road. Thus, the father of the plaintiff or his other predecessor(s) are deemed to have acquiesced.

Still further, this matter can be examined from another angle. No doubt, the State Government is not entitled to claim title by way of prescription of time, by way of adverse possession, however, still the suit filed against it can be defeated on the ground that it is barred by limitation. Even if the plea of plaintiff is accepted, it becomes clear that the road was laid in the year 1975-76 i.e. around 36 years before filing of the suit. If the road had been laid without the consent of the landowners, the possession of the State was open, hostile and known to everyone. In such circumstances, the possession of the State which became adverse to the owners became known to the landowners in the year 1975-76 itself. Thus, the suit filed by the plaintiff was clearly barred by lapse of time. Under Article 65, the limitation for filing the suit on the basis of title claiming possession is 12 years from the date the plaintiff comes to know of the adverse possession. In the present case, the plaintiff has himself admitted that he knew from the time of his birth that road has been laid. The plaintiff, when appeared in evidence, was 30 years old. In such circumstances, even if the period till he attained majority i.e. 18 years is excluded, still the suit filed by the plaintiff in the year 2012 was barred by time as the plaintiff appeared in evidence in the year 2015.

This aspect can be examined from yet another angle. The defendant-respondent has claimed that the road was constructed/laid with the consent of landowners in public interest. In view of the inaction on the part of the plaintiff or his predecessor claiming compensation for a period of 36 years leads the Court to draw an inference that the road was laid with the consent of landowners. The evidence available on the file is leaning more in

favour of the State. Hence, it appears to this Court that the road was laid with the consent of the landowners and that is the reason why the landowners never objected during all these years. Apart from the aforesaid considerations, there is another aspect which needs to be looked into. Here is a case where the landowner has woken up after a period of 36 years. Such delay on the part of the plaintiff certainly disentitles him to any relief, whatsoever. In this regard, reliance can be placed on the judgment passed by the Hon'ble Supreme Court in *State of Maharashtra Vs. Digambar, (1995) 4 SCC 683*. In this case, Hon'ble the Supreme Court was examining the delay condoned by the Aurangabad Bench of the Bombay High Court. The High Court had directed the State to acquire the land whereas Hon'ble the Supreme Court after re-examining the aforesaid issue, set aside the directions issued and held that such claim is barred. Of course, the aforesaid question of delay had arisen in filing of a writ petition in the High Court.

Keeping in view the aforesaid facts, this Court does not find any good ground to interfere with the findings of fact arrived at by the learned First Appellate Court. Hence, both the Regular Second Appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

16.03.2020

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**