

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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RSA No.5774 of 2018 (O&M)
Date of decision:12.2.2020

Surinder Kumar and others

... Appellants

versus

Pawan Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Ms.Priyanka Kansal, Advocate, for
Mr.Nitish Garg, Advocate,
for the appellants
...

AMOL RATTAN SINGH, J. (Oral)

This is the second appeal filed by the defendants in a suit filed by the respondent seeking possession of a house (fully described in the judgment of the learned trial court), on the basis of a sale deed stated to have been executed in his favour on 30.5.1996, with him further seeking a decree of permanent injunction restraining the defendants (present appellants) from alienating any part of the house in dispute to any other person.

In their written statement, the appellant-defendants took a plea of being in adverse possession of the suit property after the date of the execution of the sale deed on 30.5.1996, with such possession alleged to be open and hostile for 12 years and they therefore having become owners of the suit property.

Other 'usual preliminary objections' were also taken, with it contended on the merits of the case, that they along with one Jiwan Kumar

were previous owners of the house in dispute, as even admitted by the plaintiff, though they denied that he had come into possession on 30.5.1996.

Allegations of harassment of the appellant-defendants at the hands of the plaintiff in connivance with the police were also made, with it further alleged that in fact the sale deed had also been obtained with the help of the police and by playing a fraud upon them (the present appellants).

It was next contended that they do not have any house at Jhandawala Road, Barnala, as was alleged by the plaintiff in his plaint, where they were residing, further denying that the plaintiff had given them the house in dispute as licensee.

A replication also having been filed by the plaintiff to the aforesaid written statement, the following issues were framed by the learned trial court:-

- “1. Whether plaintiff is entitled to possession, as prayed for?
OPP.
2. Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP
- 2A. Whether defendants became owners of suit property by way of adverse possession? OPD
- 2B. Whether suit is within limitation? OPP
3. Whether the plaintiff has no *locus standi* and cause of action to file present suit? OPD
4. Whether plaintiff is estopped by his own act and conduct from filing present suit? OPD
5. Whether suit is not maintainable in the present form?

OPD

6. Whether plaintiff has filed the present suit just to harass the defendants? OPD
7. Whether suit of plaintiff is not properly valued for the purpose of court fee? OPD
8. Relief.”

Upon the parties having thereafter led evidence in the form of documents and by examination of witnesses, the learned trial court first found that a civil suit had earlier been filed by the appellant-defendants which was dismissed on 19.7.2000, with a copy of that judgment having been led by way of evidence as Ex.P-3 in the present *lis*, with the sale deed executed on 30.5.1996 in favour of the respondent-plaintiff by the appellant-defendants, having been proved to be duly executed for valuable consideration and it therefore being a legal and valid document.

Hence, as regards the ownership of the respondent-plaintiff over the suit property, it was held to have been already settled in the earlier *lis* between the parties (instituted by the present appellants).

Arguments on behalf of the appellant-defendants as regards the boundaries of the property not being properly defined were also found without any basis, because there was no pleading to that effect; and in any case the sale deed having been proved in the earlier suit, with the description thereof given in the sale deed, that argument was also rejected.

As regards the plea of adverse possession taken by the appellant-defendants, it was held that as a matter of fact they could not prove that their possession over the suit property was open and hostile since

the time of the execution of the sale deed, with nothing proved even thereafter as to when such possession became hostile, and therefore the basic ingredients necessary for proving such kind of possession on the basis of which the appellant-defendants could have been declared to have perfected their title to the suit property, were not proved.

Consequently, the suit of the plaintiff was decreed in his favour.

The appellants having filed a first appeal which came up before the learned Additional District Judge, Barnala, that court went more into detail on the issue of adverse possession, again holding the title of the plaintiff to the property on the basis of the aforementioned sale deed already having been proved in the previous *lis*. That court also recorded that it had already been in fact held vide the judgment in the previous *lis* (Ex.P-3) that possession of the appellant-defendants herein, i.e. the plaintiffs in the previous suit, was permissible/permissive.

To that effect, paragraph 15 of the earlier judgment was reproduced as follows by the learned first appellate court (in the present *lis*):-

“So although the plaintiffs are presently in possession over the house in dispute, but they are not owners thereof. Rather, they are sitting therein only with the permission of defendant as licensee. So, the plaintiffs are not entitled to declaration or injunction as prayed for.”

Those findings of the learned trial court in that *lis* were found to have been upheld in the appeal filed in that *lis*, with that judgment eventually having become final.

Thus, the learned first appellate court in the present *lis*, also came to the conclusion that the possession of the appellant-defendants over the suit property ever since the sale deed dated 30.5.1996 was executed, was not proved to be hostile and adverse to that of the respondent-plaintiff and consequently, essentially on that finding, the first appeal was also dismissed, with the other issues on lack of *locus standi* and cause of action also having been similarly decided.

However, what needs to be specifically noticed is that as regards issue no.4, i.e. the plaintiff being estopped by his own act and conduct from filing the present suit, that court held that simply because the appellant-defendants had made improvements to the house after selling it in favour of the respondent-plaintiff, that would not debar the plaintiff from filing the suit seeking possession of his property, as such improvements were made by them knowing very well that they were not owners of the house.

Consequently, that issue was also decided in favour of the respondent-plaintiff and against the appellant-defendants.

The first appeal was also therefore dismissed.

Before this court, learned counsel for the appellants obviously has not been able to dispute the factual position with regard to the sale deed dated 30.5.1996 having been duly proved to be a valid sale deed in the previous suit instituted by the appellants themselves, and therefore as regards the title to the suit property, naturally, with that judgment having become final, there was no question of any new plea being allowed to be taken in the present *lis*.

As regards the question of whether the appellants had become owners of the suit property thereafter by way of adverse possession, though the argument of learned counsel for the appellants to that effect was appealing at first blush, however having seen the fact that the learned lower appellate court has recorded a finding to the effect that even possession by the appellants over the suit property was found to be permissive/permissible in the previous *lis*, with that finding also having become final, naturally as regards possession from 30.5.1996, this court cannot reopen that issue.

The question that then may arise is as to whether, and when, such possession could have been claimed to have become adverse by the appellants (till the time of the filing of the suit by the respondent-plaintiff).

It is seen that the suit in the present *lis* was instituted on 25.9.2008 as Civil Suit no.573, i.e. slightly 12 years, 3 months and 25 days after the execution of the aforesaid sale deed.

Hence, if 12 years were to be computed from the date of the sale deed and the obvious continuous possession of the appellants, the plea of adverse possession would actually be acceptable; however, as already observed herein above, the learned lower appellate court having held from a perusal of the judgment in the previous *lis* (Ex.P1) as regards the permissive/permissible possession, this court would not hold that thereafter within 4 months of 30.5.1996, such possession of the appellant-defendants over the suit property can be declared to be open and hostile to the knowledge of the respondent-plaintiff, with in fact the appeal in that *lis* having actually continued till 19.9.2002 (as had been found by the learned lower appellate court in the present *lis* on the basis of the judgment of the

learned appellate court in that *lis*, as was exhibited as Ex.P-5 before the learned courts below in this *lis*).

Keeping in view the above, I find no ground on which this appeal can be entertained, which is consequently dismissed *in limine*.

It needs to be said here that naturally, whether the possession of the appellants over the suit property was actually adverse and hostile or not, after the sale deed was executed on 30.5.1996, is not to be commented upon by this court at all, in view of the fact that that finding was given in a previous *lis* with that judgment obviously not being subject matter of challenge in these proceedings.

12.2.2020
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No