

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

RSA No.3016 of 2004(O&M)

Date of Order: 26.03.2021

Vinod Kumar and another

.....Appellants

Versus

Surjan Singh @ Surja and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.M.Sharma, Advocate,
for the appellants (in RSA No.3016 of 2004).

Mr. Vikas Suri, Advocate
for respondent no.1 to 8 (in RSA No.3016 of 2004).

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conference on account of restricted functioning of the Courts.

Defendant No.4 and 5 have filed this Regular Second Appeal against the concurrent findings of fact arrived at by the courts below while decreeing a suit for grant of decree of declaration to the effect that the plaintiffs-respondents have become owners of land measuring 4 kanals and 2 marlas comprised in khewat/khatauni No.807min/987min, khasra no.43 as per the jamabandi for the year 1987-88 by way of adverse possession and the defendants are left with no right, title or interest upon the same.

The plaintiffs filed this suit claiming that they are in exclusive continuous hostile possession of the disputed land for the last more than 40-45 years since the time of their forefathers to the exclusion of the true owner and therefore, they have become owners by way of adverse possession.

They have also constructed a residential house upon the portion of the disputed land and are residing therein for the last 30-40 years. In the revenue record, they have been recorded to be in hostile possession. In the column of ownership, the names of defendant no.1 to 3 have been wrongly recorded on the basis of a sale deed dated 26.08.1991. Previously, the Punjab Wakf Board filed a suit in the year 1966-67 against the plaintiffs and their father claiming that the suit property is a Wakf property in which the plaintiffs and their predecessors took a defence that they have become owners by way of adverse possession. The suit was dismissed and their possession upon the disputed land has been established since 1948. First appeal as well as the second appeal filed by the Wakf Board was dismissed. The plaintiffs also sought a declaration that the sale deed executed by defendant no.1 to 3 in favour of defendant no.4 to 6 is illegal, null and void and not binding upon the rights of the plaintiffs.

The defendants contested the suit while taking a stand that the plaintiffs are not in exclusive possession of the disputed land since the time of their forefathers. It was also disputed that the plaintiffs have constructed a residential house upon the land. Defendant no.4 to 6 have purchased the land measuring 6 kanals 14 marlas including the disputed land vide a registered sale deed dated 26.08.1991 which has been incorporated in the revenue record. As noticed above, both the courts below have decreed the suit.

Learned counsel for the parties have been heard at length and with their able assistance the Court has perused the paper book as well as the requisitioned record of the courts below.

Learned counsels were also permitted to file their written synopsis with the gist of their submissions.

Learned counsel for the appellant has filed written synopsis which read as under:-

“1. That in the present case challenge is to the judgments and decrees of both the courts below, wherein the respondents/respondents filed suit for grant of decree for declaration that the plaintiffs have become owners by way of adverse possession has been decreed by both the courts below. Hence, the present appeal by the defendants/appellants/owners, in which following order was passed on 06.03.2007.

“RSA No.3016 of 2004

*Present: Mr. Surinder Mohan Sharma, Advocate
for appellants*

Contends that in view of the law laid down by this court in Bhim Singh & Others vs. Zile Singh & Others, 2006(3) RCR (Civil), 97, suit filed by the plaintiffs was not legally maintainable.

The arguments of the learned counsel raise a substantial question of law.

Admitted.

March 7, 2007

Sd/-

*(Viney Mittal)
Judge”*

2. That both the courts below have not taken note of various judgment of various courts on the point that suit itself is not maintainable claiming adverse possession. Our own D.B in a case of Vijay Bhawar and others vs. Ajaib Singh 2015 (3) RCR (Civil) 604, has held that no declaration qua ownership can be sought by a plaintiff on the basis of adverse possession voer a property. The plea of adverse possession can be taken in defence in a

suit filed by the plaintiff for possession on the basis of title citations on the point of maintainability are attached. Copies of citations (1) 2015 (3) RCR (Civil) 604, (2) 2015(1) RCR (Civil) 702, (3) 2015 (5) RCR (Civil) 718, (4) 2017 (5) RCR (civil) 41, (5) 2015 (2) RCR (civil) 359.

3. That the Ist appellate court has concluded in para 23 of the judgment that the trial court has wrongly relied upon the report of the L.C. Ex.P8 and Ex.P2 is also of no help to the plaintiff. However, the appellate court has still decreed the suit solely on the basis of taking the assumption that the plaintiff are in long possession, although, at page 46 in 6th line from top the appellate court has admitted the fact that no jamabandi of the intervening period from 1963-64 to 1987-88 has been produced by the plaintiff. Yet the presumption of continuity of the interest as such has been raised.

4. That in citation 2015(2) RCR (Civil) 359 our own Hon'ble High Court has held that the person claiming adverse possession has to plead and prove the date when his adverse possession commenced, what was the nature of his possession, knowledge of true owner of his adverse possession, duration of such possession, open and undisputed. In the present case the courts below have assumed the possession of the plaintiffs by picking the years from here and there. As no specific date of commencement of possession and the maturity date has not been pleaded by the plaintiffs. Both the courts below have erred in law and on facts as well.”

With regard to the first argument of the learned counsel, it may be noted that Hon'ble Supreme Court in **Ravinder Kaur Grewal and Others vs. Manjit Kaur and others, (2019) 8 SCC 729** has held that a plaintiff can maintain a suit for declaration that he has become the owner by way of

adverse possession. The view of the Division Bench as well as various Single Benches including the judgment in *Bhim Singh & Others vs. Zile Singh & Others, 2006(3) RCR (Civil), 97* have been held to be not a good law.

Next argument of learned counsel is based on reading of paragraph 23 of the judgment passed by the learned first appellate court. On careful reading of paragraph 23, the first appellate court has held that, although, the judgment in favour of the plaintiff in case filed by the Punjab Wakf Board as well as report by the Local Commissioner Ex.P8, does not conclusively prove adverse possession of the plaintiffs, however, that would not by itself make any difference in the result of the case. In the present case, the plaintiffs have produced ample evidence to prove their possession. The plaintiffs have produced jamabandi for the year 1963-64, Ex-P4. The plaintiffs' father is recorded to be in forcible possession adverse to the true owner. Similarly, jamabandi for the year 1987-88 also clearly establishes that the plaintiffs are in adverse possession of the said property.

Still further, the defendants, after having claimed that the plaintiffs are not in possession and that they have not constructed the house, went on to admit that the plaintiffs have forcibly constructed the house over the plot measuring 300 Sq. Yds. DW1-Om Parkash had admitted that he has been watching the possession of the plaintiffs over the suit land since the year 1990.

Further, it is established on the file that the Punjab Wakf Board filed a suit in the year 1967 against the plaintiffs and their father. The plaintiffs and their father who were defendants in the aforesaid suit claimed adverse possession. The Punjab Wakf Board failed in the suit as well as in

the appeals. No doubt, in that suit, the court did not record findings with regard to adverse possession of the defendants therein as there was no requirement. This judgment can be used as a corroborative evidence. It is already established that the open, adverse and hostile possession of the plaintiffs is continuous for the last 40-45 years.

Next argument of learned counsel also does not have any force. No doubt, the date on which the possession of the plaintiffs became adverse is not proved but as per revenue record the adverse possession of the plaintiff is established from the year 1963.

In view of the aforesaid discussion, there is no substance in the appeal.

Hence, dismissed.

26th March, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No