

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

RSA No.879 of 2007(O&M)

Date of Order:12.01.2021

Laxmi Narain

..Appellant

Versus

Kartar Singh and another

..Respondent

RSA No.3975 of 2019(O&M)

Laxmi Narain

..Appellant

Versus

Kartar Singh and another

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Lamba, Advocate,
for the appellant (in both the appeals).

Mr. Vikram Punia, Advocate
for the respondents (in both the appeals)

ANIL KSHETARPAL, J(Oral)

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

By this judgment, Regular Second Appeal No.879 of 2007 and Regular Second Appeal No.3975 of 2019, shall stand disposed of, as the main parties & their counsels are common and the dispute is also with respect to the same property. Learned counsels are ad idem that both the appeals can be disposed of by a single judgement as the substratum of both is the same.

At the outset, it is important to note that regular second appeals,

in the States of Punjab, Haryana and the Union Territory of Chandigarh are regulated by Section 41 of the Punjab Court Act 1918, and not by the provisions of Section 100 CPC, as interpreted by the Supreme Court in *Pankajakshi Vs. Chandrika (2016)6 SCC 157* (5 Judges Bench).

In Regular Second Appeal No.879 of 2007, the plaintiff-Laxmi Narayan is in appeal against the judgment passed by the learned first appellate court which in turn reversed the judgment of the trial court. The plaintiff has filed a suit for declaration with consequential relief of permanent injunction claiming that the mutation of plot, sanctioned by the revenue authorities on 08.09.1997, is not binding on his rights. He further prayed that the defendants be permanently restrained from interfering in his peaceful possession.

Regular Second Appeal No.3975 of 2019, has been filed by the defendant-Laxmi Narain. Kartar Singh and Babita (Respondents) filed a suit for permanent injunction claiming that they are the owners in possession of a plot measuring 11 marlas which was also the property in dispute in the previous suit. Both the courts have decreed the suit on the strength of the judgment passed in the previous suit by the first appellate court.

This Court has heard learned counsels for the parties at length and with their able assistance perused the judgments passed as well as the record of the courts below, requisitioned in RSA No. 879 of 2007. Learned counsels, representing their respective parties, have also filed their respective written submissions.

After having heard learned counsels representing the parties, this court is of the considered view that the judgment passed by the learned

first appellate court in Regular Second Appeal No.879 of 2007 and the judgment passed in the other appeals, are erroneous & suffer from material irregularity. In RSA No.879 of 2007, the first appellate court, before reversing the judgment of the trial court, has failed to consider the case in proper perspective and also failed to discuss and critically analyze the reasons given by the trial court while decreeing the suit.

At this stage, it would be appropriate to extract the pleadings in paragraphs 2 to 6, of the plaint and corresponding paragraphs of the written statement:-

“2. That the father of plaintiff late Sh. Chander Singh purchased a residential house from late Sh. Hardwari Lal son of Sh. Natha through a registered sale deed dated 05.04.1961 for a sale consideration of Rs.300/-.

3. That the father of the plaintiff also purchased a plot measuring 0K-11M which is described in khasra no.2341, khata no.378, Rect. & Killa No.100/5, about 330 sq. yards, on dated 05.4.1961 for a sale consideration of Rs.95, and the plot was previously comprised in Khewat No.267 and the said plot was allotted to late Sh. Hardwari Lal on 05.12.1954 during the consolidation and same is also described in allotment book issued by the Government of Haryana. The said plot is bounded as under:-

East : Rasta

West : Gali Share-Aam

North : Gali Share-Aam.

South : House of Tota Ram, Gadaria and house of Sh. Jai Pal, Dhobi.

The site plan of the said plot is attached herewith for the kind perusal of this Hon'ble Court.

4. *That the father of the plaintiff took the possession of said plot on the date of purchase i.e. 5.4.1961 and since then the plaintiff's father became owner in possession of the said plot and as well as of house as mentioned in para no.1 of the plaint, without any obstruction and interruption from any body else. Since the time of purchase the father of the plaintiff had been using the said plot for tethering cattle and storing fire woods and all other practical purpose. The father of the plaintiff also constructed the boundary wall of the said plot and also planted a tree therein. After the sale of the said plot by late Sh. Hardwari Lal he or his legal heirs have no right, title or interest whatsoever in the same.*

5. *That after the sale of said plot as detailed in para no.3 of the plaint said Hardwari Lal also handed over the Allotment Book of the ownership of the plot in dispute to the father of the plaintiff, since then the father of the plaintiff was owner in possession of the plot in dispute as he also constructed boundary walls upto the height of 4/5' and he had been using the said plot for all type of practical purposes, and after the death of father of the plaintiff on 1.1.1969 the plaintiff is continuing in peaceful and uninterrupted possession of the plot in dispute and has become owner in possession of the same by way of adverse possession of the same.*

6. *That the defendants are not residents of village and they are not voters and have not any ration card in the said village Jati Kalan and they are residing outside the village throughout and even today the defendants are not residents of said village.”*

The defendants contested the suit and replied to the aforesaid

paragraphs in the following manner:-

“2. That para no.2 of the plaint is also wrong hence vehemently denied. Father of the plaintiff never purchased any house from one Hardwari Lal. But it was given by the father of the defendant with the permission to live in the said house with the condition that the father of the plaintiff and plaintiff may vacate the house in question after revoking the licence at any time and the father of the defendant only permitted him to live only in the said house and if there is any sale deed dated 5.4.1961, the same is false, illegal, fictitious, void abinitio and not binding, in any manner, upon the rights of the defendant's father and also now the same is not at all binding upon the rights of the defendants. The father of the plaintiff only played a fraud upon the father of the defendant to get the sale deed executed, in his favour.

3. That the contends of para no.3 of the plaintiff as stated are wrong hence emphatically denied. The plaintiff as well as the father of the plaintiff never remained in possession, in any way, over the plot in question and the father of the defendant never executed any sale deed in favour of the father of the plaintiff and if there is any sale deed dated 5.4.61 regarding the plot in suit that is quite false and fictitious having no effect, at all upon the rights of the defendant's father and defendant at all. In case there is sale deed dated 5.4.61 of said plot, the same is the result of fraud only played by the father of the plaintiff upon the father of the defendant. The father of the defendant was really a very simple and illiterate one and he always remained under the influence of the father of the plaintiff. The defendants are owners in possession over the plot in suit of which they have raised the boundary walls up to the height of at least two feet and they use the said plot for all

practical purpose. The rest of the para of the plaint is wrong and hence denied. Boundaries given by the plaintiff are wrong and not according to the site in dispute. The site plan submitted by the plaintiff is also incorrect. The correct site plan will be submitted by the defendants later on.

4. That para no.4 of the plaint as it has been stated is wrong hence vehemently denied. The father of the defendants never sold away the plot in suit on 5.4.61 or prior to it or after it, then the question for taking possession by the father of the plaintiff does not arise at all. The plaintiff's father and plaintiff were and is neither owners nor in possession over the plot in question, at all. The plaintiff is very mischievous and cunning person and he wants to dispossess the defendant by hook or crook without any cause or excuse. The plaintiff's father and the plaintiff never used the plot in suit in any manner thus the question of tethering cattle by the plaintiff or his father or storing fuel woods etc. in the plot in suit, does not at all arises. The plaintiff or his father never remained, in any way, in possession of the plot in suit, then the question of raising any construction thereon does not at all arise. The trees in the plot in suit were also planted by the defendant. In this way, the plaintiff has no concern, whatsoever, in any manner with the plot in question or any part thereof.

5. That para no.5 of the plaint as stated is wrong and is hence denied. The plaintiff's father with a malafide intention and with the intention of theft, stolen away the allotment book regarding the plot in question. The father of the defendant and the defendant requested the father of the plaintiff and the plaintiff also to return the said document of ownership pertaining to the plot in

dispute but they avoided the requests of the defendants and on the basis of that document plaintiff filed the present false and fictitious suit without any footings against the answering defendant. The detailed reply has already been given in the foregoing paras of the written statement. The rest of the para as stated is also incorrect hence vehemently denied. The plaintiff is neither owner nor in possession of the suit property and the permissive as well as adverse possession plea never go simultaneously and the plaintiff has no possession over the plot in question then the question of becoming owner of the suit property by way of adverse possession does not at all arise.

6. That the contends of para no.6 of the plaint as described are wrong and hence denied. The defendants are bonafide residents of village Janti Kalan (Sonepat) and as such they are doing their business at Delhi and hence used to come to their native village frequently. The rest of the para as stated is also wrong and hence denied.”

On careful reading of the aforesaid pleadings, it is apparent that there are two different properties. One is a residential house which was purchased by plaintiff's father (Late Sh. Chander Singh) from defendants' father (Late Sh. Hardwari Lal) vide registered sale deed dated 05.04.1961, for a sale consideration of Rs.300/-. The other property is a plot, specifically mentioned in paragraph 3 of the plaint, comprised in Killa No.100/5 measuring 330 square yds. It is pleaded that the aforesaid property was also purchased on 05.04.1961, for a sale consideration of Rs.95/-. It may be noted here that with regard to the plot measuring 11 marla, the plaintiff never pleaded that a sale deed was executed or it was sold through a

registered sale deed dated 05.04.1961. Further in para 5, the plaintiff has specifically pleaded that the aforesaid plot was allotted to Hardwari Lal and he had handed over the allotment book thereof to late Sh. Chander Singh. It may be noted here that Chander Singh and Hardwari Lal were cousin. The plaintiff has also pleaded in para 6 that the defendants are not residing in the village. The suit was filed on 17.10.1997. It is further very important to note that the defendants did not dispute in para 5 of the written statement that the allotment book of the plot in question is with the plaintiff-Laxmi Narayan. The stand taken by the defendants is that the aforesaid allotment book was stolen by Chander Singh.

The plaintiff in order to prove its case, produced copy of the registered sale deed dated 05.04.1961 as Ex.P1 and in oral evidence examined himself as PW1, Sat Narayan as PW2 and Kartar Singh as PW3. A site plan of the plot was also produced by the plaintiff. The defendants did not lead any evidence.

Learned trial court on appreciation of evidence decreed the suit filed by the plaintiff. The court held that the plaintiff has been in uninterrupted continuous possession of the plot in question since 05.04.1961 as owner and therefore, the plaintiff has perfected his title on the basis of adverse possession. The defendant-Kartar Singh filed an appeal. Along with the appeal, an application for permission to lead additional evidence was also filed. The first appellate court accepted the appeal and granted permission to the defendant to lead additional evidence while setting aside the judgment of the trial court. The aforesaid order of remand was set aside by the High Court in Regular Second Appeal No.3952 of 2005 and the first appellate court was directed to call a report from the trial court

and thereafter, re-decide the appeal.

Pursuant thereto, the defendant Kartar Singh was permitted to lead evidence. He appeared himself as DW1 and produced copies of jamabandies, khasra girdwaries and mutation. On the basis thereof, the learned first appellate court accepted the appeal and reversed the judgment of the trial court.

At this stage, it would be appropriate to extract relevant portion of the judgment passed by the learned first appellate court:-

“8. The learned counsel for the appellant submitted that the impugned judgment and decree dated 30.9.2004 passed by the learned Lower Court is against law and facts. The learned Lower Court has not appreciated the evidence properly and has caused the miscarriage of justice. The lower court have gravely erred in evaluating the evidence led by the respondents. The lower court has not expressed anything especially with regard to the relief of declaration nor has decided the issues properly. As per the allegations of the respondents, his father purchased the subject matter of the suit i.e. plot measuring 11 Marlas comprised in Khasra No.2341, Khata No.378, Rect. & Killa No.100/5 on 5.4.1961 for a consideration of Rs.95/-. The plot was previously comprised in Khewat No.267 and was allotted to late Hardwari Lal on 5.12.57 during the consolidation proceedings. The copy of sale deed Ex.P1 produced by the respondents is nowhere concerned with the purchase of the suit plot. The sale deed Ex.P1 relates to the house purchased on 5.4.1961 in lieu of Rs.300/-. The learned counsel for the respondents has relied upon the case titled Suryadevara Pullayya V. Suryadevara Satyanarayana, Andhra Pradesh High Court, 2002(1), Civil & Rent Judicial Reports page 178. the cited law is

not applicable in the circumstances of the present case, because, the sale deed Ex.P1 does not relate to the subject matter of the suit. In the instant case, PW1 Laxmi Narain has stated on oath that after the death of his father, he is in peaceful and uninterrupted possession of the suit plot and has become the owner of the same by way of adverse possession. The learned counsel for the respondents has relied upon the case titled Kirpa and others V. Dharma and another, Punjab & Haryana High Court 2006(3) RCR (Civil) page 597, Karan Singh V. Bhim Singh and others, Punjab & Haryana High Court, 2005(4) Civil & Rent Judicial Reports, page 499. Both the referred citations are not applicable in the circumstances of the present case, because in the revenue records, the respondent is nowhere recorded to be in possession of the suit property through out. The learned counsel for the respondent submitted that the entries contained in the column of jamabandi in favour of the appellant are only for fiscal purposes and the same does not create any title. He has relied upon the case titled Om Prakash V. Gram Panchayat Jodhpur, Punjab & Haryana High Court, 2003(3) RCR (Civil), page 838. The referred citation again is not applicable in the circumstances of the present case, because, the revenue entries in the column of jamabandi carry presumption of truthness and these entries carry much weight.

9.PW1 Laxmi Narain has admitted in the cross-examination that the sale deed Ex.P1 does not relate to the suit plot. PW2 Sat Narain has also admitted in the cross-examination that the sale deed Ex.P1 does not relate to the suit plot. On the other hand, DW1 Kartar Singh has categorically stated that the sale deed if any is fictitious and fraudulent. He has raised the boundary

wall on the plot in dispute and the appellant is in possession of the suit property as owner. The site plan submitted by the respondents is incorrect. The trees standing in the plot have been planted by him. He has tendered the copies of jamabandi and Khasra Girdawari Ex.D1 to Ex.D6. In the column of jamabandi for the year 1993-94 Ex.D1, Hardwari Lal is recorded to be the owner in possession of the suit plot which was transferred in favour of the appellant after his death vide mutation No.2341 Ex.D3. The appellant is proved to be in possession of the suit plot on the basis of Khasra Girdawari for the year 2005-06 Ex.D4. The learned counsel for the appellant has relied upon the case titled Gajinder Singh & Ors. Vs. Narotam Singh & Ors. Himachal Pradesh High Court, 1996(1) LJR Page 712 wherein it was laid down that the presumption of truth is attached to the entries in the latest record of right. The possession which is peaceful, open, continuous must be actual physical exclusive, hostile and continuous. The learned counsel for the appellant submitted that the suit for permanent injunction is not maintainable against the actual owner of the suit land. He has relied upon the case titled Om Prakash Vs. State of Haryana, Punjab & Haryana High Court, 1999(1) LJR page 15.

10. The respondent has based his case merely on oral evidence alleging to have become owner by way of adverse possession. As per the law laid down in the case titled Harbans Kaur & Ors. Vs. Bhola Nath & Anr., Delhi High Court, 1995(1) LJR 596 the oral evidence is not enough to substantiate the claim of adverse possession. The date or month on which the premises was occupied or the date on which he raised super structure on the property must be mentioned. In the instant case, none of the witnesses have stated the date

or month on which they occupied the land or raised boundary wall. In view of the law laid down in the case titled Mahajan Vs. Anr. Vs. State of Himachal Pradesh, Himachal Pradesh High Court, 1999(2) LJR 690 the oral evidence relied on behalf of the respondent can not have the effect of rebutting the presumption of truth that attaches to the record of rights under the law. The revenue records produced by the appellant does not show the possession of the respondent over the suit land or even on a part of the same.

11. The learned counsel for the appellant further agitated that no structure has ever been raised over the suit property and there are mere allegations on behalf of the respondent that they have been using the suit property for tethering the cattle or for placing Bitora etc. The learned counsel for the appellant has relied upon the case title Nathu Lal & Ors. Vs. Gulab Bai & Ors., Rajasthan High Court, 2003(Supp.) LJR page 148 wherein it was laid down that mere tethering of cattle and storing logs on waste land used for storing the fuel by the neighbourer is not adverse possession. It is merely a case of user and not of possession of the open land. The learned counsel for the appellant has further relied upon the case titled Gurdeep Singh Vs. Balwant Singh and others, Punjab & Haryana High Court, 2005(1) LJR page 469 wherein it was laid down that the adverse possession should be open, continuous, hostile and to the knowledge of the true owner by asserting title in himself admitting ownership of other side. In the present suit, the respondent failed to prove his title and he is not entitled to injunction against the true owner.

12. The respondent has taken tow contradictory pleas in this case. Firstly, he is claiming his possession over the

suit land on the basis of the sale deed and secondly, he is claiming his ownership over the suit land on the basis of adverse possession. In the case titled Rama Kanta Jain Vs. M.S. Jain, Delhi High Court, 1999(2) RCR (Civil) page 685 it has been laid down that a person who traces his possession to a lawful title can never become an owner by adverse possession. The mere fact that the respondent has come forward with a plea of adverse possession means that he admits the appellant to be true owner. For a plea of ownership on the basis of adverse possession, the first and foremost condition is that the property must belong to someone else other than the person pleading his title. In the instant case, the respondent has put forward the defences which are irreconcilable and mutually destructive and inconsistent with one another.

13. In view of the foregoing discussions, it is held that the respondent has failed to prove his title on the basis of the sale deed. He has also failed to produce the allotment book allegedly in his possession. The respondent has also failed to prove his ownership by way of adverse possession. As a matter of fact, these two contradictory pleas could not be taken side by side. The learned Lower Court has not appreciated the evidence properly and the findings given under all the issues are incorrect. The impugned judgment and decree suffers from material infirmities and is liable to be reversed.”

It is apparent that the learned first appellate court has failed to separate its finding from the arguments. In para 8, the learned first appellate court starts with the arguments of learned counsel for the appellant but thereafter in the same paragraph, gives its observation/finding. Similarly,

in para 9, the Court starts discussing the evidence of Laxmi Narayan and thereafter, made its observation. The same is the position in para 11.

Let's make an attempt to summarize the reasons for reversal of the judgment of the trial court. In the considered view of this court, the following reasons have been recorded by the Ist appellate court:-

- (1) The plaintiff is not recorded to be owner in possession of the suit property in the revenue record.
- (2) The defendants is proved to be in possession of the property on the basis of khasra girdwari for the year 2005-2006.
- (3) The case of the plaintiff is based merely on oral evidence which is not permissible.
- (4) The plaintiff cannot claim adverse possession merely on the ground that he uses the property for tethering cattle or for placing the 'Bitora' etc. (cow dung cakes).
- (5) The plaintiff has taken two contradictory stands, reconciliation whereof is not possible.
- (6) The plaintiff has failed to produce the allotment book of the plot in question.

At this stage, it would be appropriate to notice that the defendant-Kartar Singh appeared in evidence as DW1. He has admitted that he was very young and not aware of the world around him when his family shifted to Delhi. He states that the plot in dispute is the only property of the family left in the village. The defendant while appearing in evidence in the year 2006 disclosed his age as 58 years. He stated that his father along with his family members were previously residing in Sarai Pipal Thala, Delhi.

He further admits that he never caste his vote in the village. He also never paid any chulha tax. He admits his father died 20 years ago. He further admits that the house was given by Hardwari Lal to Chander Singh, although, he feigned ignorance about the sale of the house property through registered sale deed. He admits that the mutation of the property was sanctioned in his favour in 1997 after the plaintiff filed the suit. However, this fact appears to be wrong because the suit was filed in October, 1997 whereas mutation was sanctioned in August, 1997. He further admits that he is permanently residing in Delhi.

It may be noted here that the property in question is located in village Jati Kalan in District Sonipat, which is the abutting district of State of Haryana to Delhi. From evidence of the defendant, it is apparent that their family shifted from the village to Delhi more than 45-50 years before the filing of the suit. It can safely be concluded from the deposition of the defendant that he has never visited the village after their family shifted to Delhi. He could not produce a single person from the village in his support. Still further, from perusal of entire cross examination of the plaintiff show that the physical possession of the plaintiff over the plot in dispute was never doubted. His entire line of questioning was directed towards the fact that registered sale deed is not with respect to plot in question. The plaintiff was also not cross examined on the fact that Chander Singh had in fact stolen the allotment book and the defendants' family had not shifted from the village lock, stock and barrel about 50 years back.

Now let's discuss the documentary evidence produced by the defendants. The defendants have produced copy of jamabandies for the years 1993-1994, 1998-1999 and 2003-2004 as Ex.D1, D-5 and Ex.D2.

Ex.D3 is copy of mutation of inheritance of Hardwari Lal sanctioned in favour of Kartar Singh and Asharfi Devi in the year 1997. On careful reading of the Ex.D3-a copy of the mutation, it is apparent that Hardwari Lal died 20 years before the year 1997. Thus, it is safe to assume that Kartar Singh died in 1977. Ex.D4 & D-6 are copies of khasra girdwari for the year 2005-2006 and the years 1984-1988.

It is apparent that the defendants thought of getting the mutation of the land entered in their favour after the 20 years of the death of their father. The family of the defendant had shifted from the village around 50 years before the filing of the suit. Before shifting, late Sh. Hardwari Lal, the defendants' father had disposed of his property. He sold residential house to Sh. Chander Singh-the plaintiff's father in 1961. Apart from the above mentioned property, there was a plot measuring 11 marla which was allotted to late Sh. Hardwari Lal in 1954. It is the case of the plaintiff that the aforesaid plot was also sold against sale consideration of Rs.95/- and late Sh. Hardwari Lal handed over the allotment book of the plot in question to Sh. Chander Singh. The defendants denied the execution of registered sale deed of residential house. They took a stand that the house in question was given for residence to late Sh. Chander Singh as a licensee. The Defendants also took a stand that the allotment book had been stolen by late Sh. Chander Singh. In other words, it is not disputed that the allotment book of the plot in question is with the plaintiff. It is significant to note that the plaintiff not only pleaded that he was handed over possession of the plot in question but he has also pleaded that his father had constructed the boundary wall of the plot and planted trees. Thus the plaintiff had claimed that his father had secured his possession. It may be noted here that late Sh.

Chander Singh died on 01.01.1969. He was cousin of late Sh. Hardwari Lal. If the house in question, as claimed by the defendants, was given on license to the family of the plaintiff, then the same came to an end on the death of late Sh. Chander Singh. However, admittedly, the defendants never took any steps to get back the possession. At this stage, it would be relevant to note that when the defendant appeared in evidence, he has stated that he does not know as to whether his father has executed the sale deed in respect of the house or not? Thus, the defendants have changed their stand in evidence.

Learned counsel for the respondents has submitted that mere assertion of the plaintiff that the defendants have sold all their property is not proved. He further contended that the learned trial court did not set aside the mutation but only granted decree of permanent injunction. The sale deed is also not qua the property in dispute. The plaintiff has failed to prove its possession. Since, Hardwari Lal and Chander Singh were cousin, therefore, Hardwari Lal did not lodge any police complaint. In the end, learned counsel submitted that Babita, plaintiff no.2 in the subsequent suit, is a bonafide purchaser vide registered sale deed dated 12.12.2007.

It may be noted here that the plaintiff has not only asserted that the defendants had sold their entire property but have also lead evidence to that effect. When defendant no.1 appeared in evidence, he admitted that the plot in question is the only property of the family left in the village. Defendant no.1 has failed to prove that he or his family members were left with any property. Still further, the mutation of the land is an entry for updating the revenue record. No separate declaration or order setting aside mutation is required to be passed. The mutation is sanctioned consequent

upon an event happening like sale, gift or transfer of the property, death of an owner. The mutation is entered and sanctioned by the revenue authorities in exercise of powers under the Punjab Land Revenue Act, 1887. It is not a judicial function. Hence, the mutation was not required to be set aside specifically.

Next argument of learned counsel that the sale deed qua the property is not in dispute. It is not even the case of the plaintiff that the plot in question is part of the registered sale deed dated 05.04.1961. Next argument of learned counsel is again erroneous as the plaintiff has proved its possession. The plaintiff apart from examining himself has produced two co-villagers, who have categorically stated that it is the plaintiff, who is in exclusive possession of the property. Still further, from the cross-examination of the defendant, it is proved that the defendant is not in possession. Learned first appellate court has relied upon the revenue record which only carries a presumption. The aforesaid presumption stands rebutted in the present case in view of the evidence lead by the plaintiff and cross-examination of the defendants.

Next argument of learned counsel for the respondents that the parties being closely related and therefore, no police complaint was filed, is result of ingenuity of the counsel. No doubt, Hardwari Lal and Chander Singh were cousin. The defendant has alleged in the written statement that the allotment book of the plot in question was stolen by Chander Singh. Once, he made such assertion in the Court, he could very well initiate criminal or civil proceedings. Still further, this is not the fact pleaded either in the pleadings or in evidence. Therefore, the same cannot be accepted.

Next argument of learned counsel is clearly erroneous. Babita

cannot be bonafide purchaser because she has purchased the property during the pendency of the first suit. The first suit was instituted in the year 1997, whereas Babita is alleged to have purchased the property subsequently. Therefore, sale in her favour is governed by rule of lis-pendens and hence become subservient to the result of the litigation.

Now let's analyze the reasons recorded by the first appellate court.

The first reason as noticed above is that in the revenue record there is no entry in favour of the plaintiff-Laxmi Narayan. It may be noted here that the revenue record is more relevant when the dispute is with reference to the agriculture land. As regards residential plot, it would hardly be of any relevance. The revenue record is maintained for fiscal purpose (Collection of the amount of Land Revenue). The copy of the jamabandi is not a document of title but it is only an evidence of title. In absence of document of title, it can be used as an evidence of title. Thus, the first reason assigned is erroneous.

The second reason assigned by the first appellate court is with respect to entry in the khasra girdwari. It must be noticed that the Patwari of area makes an entry in the khasra girdwari once the crop sown is ripe for harvesting. In the khasra girdwari, the patwari of the area is required to record as to what kind of crop was sown and thereafter harvested on a particular piece of land. The entry in the khasra girdwari is regulated by Chapter IX of the Haryana Land Records Manual with title "Harvest Inspection". As per Clause 9.1 of the Haryana Land Records Manual, the Patwari is required to make inspection of each harvest normally on 1st October with regard to 'Kharif' crop and 1st March with regard to 'Rabi' crop.

Of course, all other crops which are not available on 1st October and 1st March can be inspected by the Patwari at the appropriate time. However, thrust of khasra girdwari is with reference to the harvest/agricultural produce. If there is a damage to the crop, then the Patwari is supposed to make an entry in the khasra girdwari. In khasra girdwari, the Patwari is also required to describe if there is change in possession of a particular piece of land. Thus, the khasra girdwari is prepared normally six monthly in order to collect information/data of the harvest. Therefore, the entry in the khasra girdwari, particularly when the piece of land is not used for agriculture, is not much of relevance. Still further, the khasra girdwari entry Ex.D4 for the year 2005-2006 is after the filing of the suit. The entry is only to the effect that it is a plot. Similarly, other khasra girdwari (Ex.P6) is also not relevant.

Next reason assigned by the court is that oral evidence qua adverse possession is not sufficient. It may be noted here that the first appellate court has relied upon the judgment passed in **Harbans Kaur and another v. Bholla Nath and another, 1995(1) LJR, 597.**

This court has carefully read the judgment passed by the Delhi High Court wherein while dismissing the regular second appeal, the court held that since the defendant had throughout claimed to be owner of the super structure only and not of the land underneath the same, therefore, the defendant has failed to prove that he has perfected his title by way of adverse possession. No doubt, in paragraph 23, in one sentence, the court has observed that the mere oral evidence is not sufficient to substantiate the claim of adverse possession, however, the same cannot be treated as ratio decidendi, particularly when, in the next line, the court has observed that the party who pleads adverse possession must show something more than that.

In the present case, plaintiff apart from leading oral evidence to prove his possession has also proved that the family of the defendant shifted from the village more than 45-50 years before the filing of the suit and, thereafter, never came back. In such circumstances, the judgment passed in Harbans Kaur (supra) is not applicable. In the present case, the disputed plot is not be part of the agricultural land. In order to prove that fact, the plaintiff did examine three co-villagers who have supported the case of the plaintiff. In such circumstances, it is safe to conclude that the plot in question is in exclusive possession of the plaintiff particularly when the family of the defendants does reside in the village for a period of approximately half a century. .

Next reason assigned by the first appellate court is with reference to the fact that mere tethering of cattle or placing cow dung cakes is not sufficient to prove the assertion of adverse possession. In this regard it is appropriate to note that the plaintiff has claimed that his father secured the possession by encircling plot with boundary wall. Thus, it cannot be said that a piece of plot was casually used by the plaintiff. Hence, the reasoning of the Ist appellate court can not approved.

Next reason assigned by the first appellate court is that the plea taken by the plaintiff is contradictory. It may be noted that the plaintiff has not taken any contradictory plea, rather he has in the alternative pleaded acquisition of title by way of adverse possession. Such plea has been taken realizing that no document was executed when the plot in question was purchased for Rs.95/-. In these circumstances, first appellate court has erred in observing that it is a contradictory plea. In fact, it is an alternative plea which is very much permissible. The plaintiff does not dispute that the plot

in question was allotted to Hardwari Lal. Therefore, the plaintiff has admitted that Hardwari Lal was the previous owner.

Next reason assigned by the first appellate court is also incorrect because the defendant in his pleadings had admitted that the allotment book is in possession of the plaintiff. Once this fact was admitted, the plaintiff was not required to prove the fact which stood admitted in the pleadings.

In the considered view of this court, the plaintiff has successfully proved that his father had purchased the plot in question in the year 1961 for the following reasons:-

1. The plaintiff has pleaded that he came in possession of the premises on 05.04.1961 and thereafter his father constructed boundary wall to encircle and assert his possession over the plot. They, thereafter, started using it. Thus, the pleadings are specific that Chander Singh entered into possession on a specific date. Still further, it is admitted act on the file that the allotment book of the plot in question is with the plaintiff. The defendants has taken a plea that the allotment book has been stolen by the plaintiff's father. However, the defendants never took any steps to take it back or lodged any complaint in this regard. Even after pleading this fact in the written statement, the defendants never took any step. The defendant failed to prove that fact. In fact, the plea taken by the defendants is contradictory. On the one hand, defendant pleads that the plot in question is in his

possession, whereas on the other hand he has taken a plea that the allotment book has been stolen by the plaintiff's father with a malafide intention. It may be noticed here that the plea of the defendants is against normal human conduct. On the one hand, defendant pleads that Chander Singh was permitted to reside in the house. On the other hand, he has taken a plea that Chander Singh had stolen the allotment book of the plot in question. Had it been so, Hardwari Lal would have revoked the licence and sought possession of the house as well as plot in question, however, no action in this regard was taken.

2. Still further, the defendant has even denied that the registered sale deed executed by his father in favour of plaintiff's father. However, when in evidence the registered sale deed was produced, then while appearing in evidence, the defendant changed his stand and deposed that he does not know if his father had executed a sale deed in favour of Chander Singh. Thus, the defendant has lost his credibility.
3. Still further, it is proved on the file that Hardwari Lal along with his family members had shifted to Delhi when defendant no.1 was very young. He did not remember as to when their family shifted from the village. He has deposed that he was very young when their family used to reside in Sarai Pipal Thala, Delhi. Before shifting, the defendants' father Hardwari Lal sold the residential house

to the plaintiff's father. He is not expected to keep a vacant plot in the village, particularly, when he has decided to shift, lock, stock and barrel to Delhi. It is apparent from the evidence of the defendants that thereafter they never came back to the village. The defendant failed to examine even a single witness from the village where the property in dispute is located.

4. Still further, it is apparent that Hardwari Lal and Chander Singh were cousin. The defendants did not take any steps for getting the mutation of inheritance for a period of 20 years after his father died. The mutation of inheritance with regard to the plot in question was got sanctioned in the year 1997 and that also immediately before the filing of the suit. In normal circumstances, if the defendants were owners of the property in dispute, they would have immediately taken steps to get the mutation in their favour, particularly when the distance between Delhi and Sonipat is not more than 60 Kms.

Now let's examine the title of the plaintiff.

The plaintiff claims that his father came in possession in 1964 pursuant to the oral sale of Rs.95,000/-. In the considered view of this court, the plaintiff has proved that fact by leading cogent evidence. Apart therefrom, once the owner, after disposing of the property, shifted from the village along with his family 50 years back, he is not expected to keep the plot in question particularly when he or his family members never returned for approximately 50 years. In these circumstances, it is safe to draw

inference that the sale as alleged by the plaintiff did take place. Even in alternative, the plaintiff has proved his title by way of adverse possession. His uninterrupted, hostile and adverse possession stands proved for a period of almost 50 years. Even after the death of Chander Singh in the year 1969, Hardwari Lal did not take steps to get back the possession of either of the house or the plot in question during the period of 8 years when he remained alive. Even after the death of Hardwari Lal, the defendants never took any steps to get back the possession.

For the reasons recorded above, the judgment passed by the first appellate court is erroneous and, therefore, set aside. Consequently, the Regular Second Appeal No.3975 of 2019 also deserves to be allowed because the entire findings in this suit are based upon the judgment dated 06.10.2006 passed by the first appellate court which is the subject matter of appeal in Regular Second Appeal No.879 of 2007 and set aside.

Consequently, both the appeals are allowed. The Civil Suit No.100/97/2000 shall stand decreed, whereas Civil Suit No.337/RT/2008/2013 filed by Kartar Singh and Babita shall stand dismissed.

12th January, 2021
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No