

125 (2 cases)

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

1. **RSA-1374-2022 (O&M)**
Date of Decision: 22.11.2022

Ram Singh and othersAppellants (Defendants)
Versus
Major Singh and others Respondents (Plaintiffs)

2. **RSA-1378-2022 (O&M)**

Gursahib Singh and othersAppellants (Defendants)
Versus
Major Singh and others Respondents (Plaintiffs)

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. P.S.Jammu, Advocate
for the appellants.

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MANJARI NEHRU KAUL, J.

CM No. 4303-C-2022 in RSA-1374-2022 and
CM No. 4307-C-2022 in RSA-1378-2022

The present applications have been filed for condonation of delay of 414 days in re-filing the appeals.

For the reasons mentioned in the applications, same are allowed. The delay of 414 days in re-filing the appeals is condoned.

Main case

1. This order shall dispose of two Regular Second Appeals i.e. RSA-1374-2022 and RSA-1378-2022, as common question of law and fact arises in both these cases. For the sake of convenience, facts have been taken from RSA-1374-2022.

2. Suit for possession and permanent injunction filed by the respondents-plaintiffs was decreed by the trial court vide judgment and decree dated 17.05.2019 and even the appeal preferred by the defendants against the said decree failed and was dismissed on 06.03.2021. Hence, they are before this court in Regular Second Appeal. Parties to the lis, hereinafter shall be referred to by their original positions in the suit.

3. In brief, the pleaded case of the plaintiffs may be noticed as thus. The plaintiffs and proforma defendants are owners of the suit land i.e. Khewat No.10, Khatoni No. 10, Rect. No. 131, Killa No. 2/2/1(3-0), as per fard Jamabandi for the year 2011-12, situated within the revenue estate of village Alikan, Tehsil Dabwali, District Sirsa. Prior to Diwali of 2014, proforma defendant Nachattar Singh suffered a paralytic stroke for which he was taken to Rajasthan for treatment. In the absence of the plaintiffs, the defendants illegally and forcibly occupied the suit land and also threatened to alienate and change the nature of the same. Even though the plaintiffs approached and requested the defendants many times to hand over the possession of the suit land to them but the defendants, however, paid no heed as a result of which the plaintiffs were left with no other choice but to file the suit in question.

4. In the written statement filed by the defendants they controverted the pleaded case of the plaintiffs and averred that they had become owners of the suit land by way of adverse possession since the last 30-40 years, from their predecessors-in-interest. It was also averred that the suit land had fallen into the share of their predecessors-in-interest in the oral family settlement arrived at about 40 years ago, between the latter and the fore-fathers of the plaintiffs and the proforma defendants. Ever since then,

the defendants had been in continuous, peaceful, open and hostile possession of the suit land which was within the knowledge of the plaintiffs.

5. Both the courts below while allowing the suit of the plaintiffs recorded concurrent findings and held that the plaintiffs had been successful in proving their title over the suit land by way of Jamabandi (Ex.P1) and the defendants on the other hand had failed to lead any evidence to substantiate their plea of adverse possession or even the oral family settlement as averred by them.

6. Learned counsel appearing for the appellants has argued that the judgments of the courts below are based on mis-reading of the evidence and thus suffer from patent illegality. He further submits that the courts below failed to appreciate that the defendants had been in adverse possession of the suit land through their predecessors-in-interest for the last 40 years, which fact was in the knowledge of the plaintiffs, and who never ever objected to their possession over the suit land. Learned counsel further submits that the possession of the suit land had been delivered to the predecessors-in-interest of the defendants by an oral family settlement and after his death, the defendants had become owners in possession of the suit land. It has been vehemently urged by the learned counsel that the courts below erred in observing that the pleas taken by the defendants were mutually inconsistent, rather they were alternative pleas. He urged that the defendants were entitled to avail of all the pleas available to them, to establish their case.

7. I have heard the learned counsel and perused the relevant material on record.

8. This court is unable to concur with the submissions made by

the learned counsel that the pleas taken by the defendants were alternative pleas and not mutually inconsistent. Before proceeding further, it would be apposite to mention that adverse possession must be hostile to the title of the owner and must begin with his wrongful dispossession. Though the defendants have claimed adverse possession over the suit land, however, it is a matter of record that in their written statement they have pleaded that their predecessors-in-interest came in possession of the suit land by an oral family settlement which took place with the fore-fathers of the plaintiffs, hence evidently they are implying permissive possession of the suit land. As per this plea, their possession did not commence with the wrongful dispossession of the plaintiffs, which is one of the pre-requisites and essential ingredients to maintain the plea of adverse possession. Therefore, the contentions of the learned counsel qua adverse and permissive possession are , on the face of it, mutually inconsistent with each other. The next essential ingredient to establish the plea of adverse possession is that the person taking that plea must admit to the title of the owner. However, the defendants on the contrary do not, even as per their own admission, know as to who the owner of the suit land is. Furthermore, the defendants have failed to mention or specify the time as to when they came into possession of the suit land. It is a matter of record that the defendants have not even placed any material on record qua the oral family settlement and still further, no challenge is laid by them to the Jamabandi (Ex.P1), which has been relied upon by the plaintiffs in support of their pleaded case.

9. On a pointed query, the learned counsel for the defendants-appellants was unable to refer to anything on record to show if the conclusions arrived at by both the courts below were contrary to the record

or suffered from any material illegality.

10. As a sequel to the above, this court does not find any ground to interfere with the well reasoned findings recorded by both the courts below. The appeals being devoid of merit are accordingly dismissed.

22.11.2022
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(MANJARI NEHRU KAUL)
JUDGE

Note: Whether speaking/reasoned	Yes / No
Whether Reportable:	Yes / No