

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.138 of 2010(O&M)
Date of Order: 28.04.2022

Mukhtiar Singh and others

..Appellants

Versus

Dara Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Lal Singh Sandhu, Advocate and
Mr. Harpreet Singh, Advocate,
for the appellants.

Mr. Sherry K. Singla, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

While assailing the findings of fact arrived at by the First Appellate Court, the defendants have filed the present appeal.

Some facts are required to be noticed.

The plaintiffs filed a suit for grant of decree of declaration that they have become owners by way of prescription of time (adverse possession). It was asserted that the plaintiffs are in a continuous possession for a period of more than 20 years.

The defendants while contesting the case asserted that the plaintiffs are not in possession, whereas the defendants along with other persons are in the possession of the property.

On appreciation of pleadings, the following issues were culled out .

- “1. Whether the plaintiffs no.1 and 2 and 9 profmrma-defendants no.45 and 46 are owners in possession in equal shares to the extent of ½ share and plaintiff no.3 is owner in possession to the extent of ½ share out of tital

- suit land measuring 19 kanals 05 marlas by virtue of adverse possession?OPP*
2. *If issue no.1 is proved, whether the revenue record is liable to be corrected as alleged?OPP*
 3. *Whether the plaintiffs have got no cause of action and locus-standi to maintain the present suit?OPD*
 4. *Whether the civil court has got no jurisdiction to file the present suit?OPD*
 5. *Whether the suit is bad for non-joinder and mis-joinder for necessary parties?OPD*
 6. *Whether the defendants are entitled for special costs under Section 35-A of CPC?OPD.*
 7. *Relief.”*

The learned trial Court after grant of an opportunity to the parties to lead evidence, dismissed the suit.

However, the appeal filed by the plaintiffs has been accepted by the Court while solely relying upon the entry in the revenue record showing possession of the plaintiffs as reflected in the jamabandi for the year 1951-1952, onward.

On careful reading of the judgment passed by the First Appellate Court , it is evident that the substantial part of the judgment is on the question of maintainability of the suit for declaration. The aforesaid matter has now been conclusively decided by the Supreme Court in **Ravinder Kaur Grewal and others vs. Manjit Kaur and others, (Civil Appeal No.7764 of 2014, decided on 07.08.2019).**

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book and the record which was requisitioned.

Before granting declaration that the person has become owner by way of adverse possession, the court is required to examine the case thoroughly. Merely a long continuous possession is not sufficient to prove the adverse possession. The Supreme Court in **Saroop Singh vs. Banto and**

others, AIR 2005 SC 4407, has laid down the following tests which the Court must apply before granting the decree of declaration with respect to conferring ownership on the basis of adverse possession:-

- (1) on what date, month or period the party came into adverse possession.
- (2) what was the nature of his possession.
- (3) whether the factum of possession was known to the other party.
- (4) was his possession open, hostile and undisputed
- (5) how long he continued in possession.

Further the Supreme Court in Achal Reddi vs. Ramakrishna Reddiar and others (1990) SC 706 has laid down that the adverse possession must be established by proving that it commenced with a wrong and maintained against the owner with a right. Further, in Amrendra Pratap Singh vs Tej Bahadur Prajapati & Ors 2004(10) SCC, 65, it has been held that entry in possession should be adverse and there should be some evidence that the person had set up title in himself.

Keeping in view the aforesaid tests, the judgments on the aforesaid parameters, it is evident that except the finding with regard to continuous and long possession, the First Appellate Court has not adverted to the remaining ingredients/tests laid down by the Supreme Court.

Keeping in view the aforesaid facts, the judgment passed by the First Appellate Court is set aside. The First Appellate Court is requested to decide the appeal afresh after following the law laid down in the aforementioned judgments.

The parties through their counsels are directed to appear before

the First Appellate Court, on 16.05.2022.

Needles to observe that the observations made by this court while remitting the matter back to the First Appellate Court shall not be construed as the final opinion on the merits of the case.

All the pending miscellaneous applications, if any, are also disposed of.

April 28, 2022

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No