

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

RSA No.1911 of 2022 (O&M)

Reserved on : 21.09.2022

Date of Decision: 18.10.2022

Dharam Pal

....Appellant

VERSUS

Sukhmandar Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P.K. Ganga, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been preferred by the defendant-appellant against the judgments and decrees dated 30.09.2016 and 18.08.2022 passed by the Courts below decreeing the suit of the plaintiff-respondent and dismissing the counter-claim of the defendant-appellant.

The brief facts relevant to the present *lis* are that the plaintiff-respondent filed the present suit for possession of the suit land situated at village Odhan, Tehsil Dabwali, District Sirsa which had been unauthorizedly occupied by the defendant-appellant and on which he had raised some construction. The defendant-appellant was also sought to be restrained from raising further construction over the suit land and from changing its nature. It was averred that the plaintiff-respondent is the owner of the suit land having purchased it vide sale deed No.7774 dated 06.03.2013 for lawful consideration and mutation No.5366 was also entered in his favour. The

defendant-appellant encroached upon the suit land and made some construction on it three years ago. It was further averred that the plaintiff-respondent being owner of the suit land was entitled to its possession as the defendant-appellant had no ownership title or interest in the suit land. The defendant-appellant also wants to raise further construction over the suit land to which he had no right.

The defendant-appellant filed written statement wherein it was submitted that the plaintiff-respondent was neither owner nor in possession of the suit land and that the sale deed bearing No.7774 dated 06.03.2013 and the mutation bearing No.5366 were wrong, against law and facts and the same are liable to be set aside. It was further averred that previously the suit land was in the shape of a shop and in the year 1990 the defendant-appellant forcibly and illegally, by an overt act, occupied the said shop and started residing therein and renovated the same and in 1993 the shop was converted into a house. The possession of the suit land by the defendant-appellant was open, hostile, continuous, without any payment of rent to anybody, to the knowledge of the general public including the plaintiff-respondent and that the defendant-appellant was residing in the said house considering himself as owner of the same. A counter-claim was also filed by the defendant-appellant praying for a decree for declaration to the effect that he is the owner in possession of the suit land by way of adverse possession and the plaintiff-respondent be permanently restrained from alienating the suit land or from causing any type of interference into the possession of the defendant-appellant over the same.

The following issues were framed by the Trial Court :

1. Whether the plaintiff is entitled to the relief of possession as prayed for ? OPP
2. If issue No.1 is decided in favour of the plaintiff, whether the plaintiff is also entitled for the relief of permanent injunction, as prayed for ? OPP
3. Whether the plaintiff has no locus-standi and no cause of action to file the present suit ? OPD
4. Whether the defendant is entitled to the relief claimed in the counter claim as prayed for ? OPDC
5. Whether the suit of the plaintiff is not maintainable? OPD
6. Relief.

Vide judgement and decree dated 30.09.2016 the Trial Court decreed the suit of the plaintiff-respondent and dismissed the counter-claim of the defendant-appellant. The Trial Court found that no positive evidence has been produced by the defendant-appellant to prove his adverse possession over the suit land and that the plaintiff-respondent had no where admitted that the defendant-appellant was in possession of the suit land for the period of 12 years before filing of the present suit. Aggrieved by the judgment and decree passed by the Trial Court, a single appeal was preferred by the defendant-appellant which was also dismissed vide judgment and decree dated 18.08.2022. Hence, the present regular second appeal.

Learned counsel for the defendant-appellant has contended that the Courts below have erred in decreeing the suit of the plaintiff-respondent and dismissing his counter-claim. According to the counsel, the plaintiff-

respondent is not the owner nor in possession of the suit land and the sale deed and mutation in his favour are illegal and incorrect. It is submitted that the defendant-appellant had forcibly and illegally occupied the suit land and had converted it into a house where he was residing and that the possession of the defendant-appellant was open, hostile, continuous, without payment of rent to anybody, to the knowledge of general public including the plaintiff-respondent for the last more than 20 years and therefore the defendant-appellant had become owner by adverse possession.

Heard.

In the present case the submissions made by counsel for the defendant-appellant are on the plea of adverse possession – that the defendant-appellant had been in open and continuous possession of the suit land for over twenty years without payment of rent to anyone and that even the plaintiff-respondent was aware about this. However, for raising a plea of adverse possession a defendant has to admit the ownership of the plaintiff. In the present case the defendant-appellant has denied the ownership of the plaintiff-respondent and has infact questioned the sale deed and mutation in his favour. Rather, the defendant-appellant also staked his ownership over the suit land on the basis of *bahi* entries Ex.D42 and Ex.D43. There is thus a contradiction in the rights of the defendant-appellant over the suit land.

In **Dagadabai vs. Abbas [(2017) 13 SCC 705]** the Supreme Court held inter-alia as under :

“15. Third, the plea of adverse possession being essentially a plea based on facts, it was required to be proved by the party raising it on the basis of proper pleadings and evidence. The burden to prove such plea

was, therefore, on the defendant who had raised it. It was, therefore, necessary for him to have discharged the burden that lay on him in accordance with law. When both the courts below held and, in our view, rightly that the defendant has failed to prove the plea of adverse possession in relation to the suit land then such concurrent findings of fact were unimpeachable and binding on the High Court.

16. Fourth, the High Court erred fundamentally in observing in para 7 that, “it was not necessary for him (defendant) to first admit the ownership of the plaintiff before raising such a plea”. In our considered opinion, these observations of the High Court are against the law of adverse possession. It is a settled principle of law of adverse possession that the person, who claims title over the property on the strength of adverse possession and thereby wants the Court to divest the true owner of his ownership rights over such property, is required to prove his case only against the true owner of the property. It is equally well settled that such person must necessarily first admit the ownership of the true owner over the property to the knowledge of the true owner and secondly, the true owner has to be made a party to the suit to enable the Court to decide the plea of adverse possession between the two rival claimants.

17. It is only thereafter and subject to proving other material conditions with the aid of adequate evidence on the issue of actual, peaceful, and uninterrupted continuous possession of the person over the suit property for more than 12 years to the exclusion of true owner with the element of hostility in asserting the rights of ownership to the knowledge of the true owner, a case of adverse possession can be held to be made out which, in turn, results in depriving the true owner of his ownership rights in the property and vests ownership rights of the property in the person who claims it.

18. In this case, we find that the defendant did not admit the plaintiff's ownership over the suit land and, therefore, the issue of adverse possession, in our opinion, could not have been tried successfully at the instance of the defendant as against the plaintiff. That apart, the defendant having claimed the ownership over the suit land by inheritance as an adopted son of Rustum and having failed to prove this ground, he was not entitled to claim the title by adverse possession against the plaintiff."

In Ravinder Kaur Grewal vs. Manjit Kaur [(2019) 8 SCC 729] it was inter-alia held that :

"60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec vi i.e. adequate in continuity, nec clam i.e.

adequate in publicity and nec precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and large the concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession."

Viewed in the light of the settled law applicable to adverse possession, this Court finds that the defendant-appellant miserably failed to make out a case in his favour. The lower Appellate Court also found that *"the defendant failed to establish the date on which he came into possession; secondly he is confused regarding the nature of his own possession as he has taken different stand that he is in adverse possession and he is owner by virtue of the bahi writings; thirdly though he has shown that the plaintiff is aware of the possession of the defendant but the same has*

only been proved from the last three years prior to filing of the suit property, not for the last more than 12 years required for perfecting the title. Having not proved three factors, it cannot be held that the defendant had perfected its title on the basis of adverse possession”.

The *bahi* entries in any event cannot confer any title on the defendant-appellant. It is well settled that that a transfer of immovable property by way of sale can only be by a deed of conveyance/sale deed. In **Suraj Lamp & Industries (P) Ltd. vs. State of Haryana and Anr. [(2012)1 SCC 656]** it was held :

“18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered

instrument and an agreement of sale does not create any interest or charge on its subject-matter.”

Thus, without a stamped and registered deed of conveyance/sale deed, no right, title or interest in immovable property can be transferred. Under the provisions of Section 17 of the Registration Act, 1908 where immovable property of the value of more than 100/- is conveyed, such sale could only be effected by a document of sale duly registered. Section 17(1)(b) of the Registration Act, 1908 mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered and Section 49 of the said Act imposes a bar on the admissibility of an unregistered document and deals with the documents that are required to be registered under Section 17. Section 49 of the Registration Act, 1908 reads thus :

“49. Effect of non-registration of documents required to be registered - No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall -

(a) affect any immovable property comprised therein,

or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be

registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.”

This Court finds no perversity or illegality in the findings recorded by the Courts below. The suit of the plaintiff-respondent has rightly been decreed and the counter-claim of the defendant-appellant has rightly been dismissed.

In view of the above, I do not find any ground to interfere in the concurrent findings of fact returned by both the Courts below. No question of law much-less any substantial question of law arises in the present appeal. The appeal, which is wholly devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

18.10.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO