

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

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**RSA-1557-2021 (O&M)
Decided on : 26.04.2022**

Ramdia (since deceased) through his LRs and others

... Appellant(s)

Versus

Manga (now deceased) through his LRs and another

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

PRESENT: Mr. Sunny Kadiyan, Advocate
for the appellant(s).

Mr. J.S. Saneta, Advocate
for the respondents/caveators.

MANJARI NEHRU KAUL, J. (Oral)

The appellants/defendants are assailing the correctness of the concurrent findings of fact arrived at by both the courts below while decreeing the suit for possession of the agricultural land measuring 14 Kanals-10 Marlas, comprising in Khewat No. 82/74 min, Khatoni No. 158, Rect. No. 84, Killa No.24 (7-8), 25/2 (3-6), Rect. No. 88, Killa No. 5 (3-16), situated within the revenue estate of village Bhandari, Sub Tehsil Madlauda, District Panipat vide Jamabandi for the year 2000-01.

Parties to the *lis*, hereinafter shall be referred to by their original positions in the suit.

The case as set out by the plaintiff is that the plaintiff and Sudhan were owners of the suit land. Ramdia son of Shri Munshi and others, filed a Civil Suit No. 464 of 2000, titled as, “Ramdia and others Vs. Manga and others”, regarding the land in dispute along with some other land in the Court of Ld. Civil Judge (Sr. Divn.), Panipat. The said suit was

dismissed vide judgment & decree dated 21.09.2006 by the Civil Court concerned. Thereafter, Ramdia and others filed Civil Appeal No. 90 of 2006 to assail the judgment and decree dated 21.09.2006 before the learned Addl. District Judge. The said appeal was partially accepted to the effect that Ramdiya and others were held to be in possession of the suit land, whereas, the plaintiffs & Sudhan were held to be owners. Further, plaintiffs and others were restrained from dispossessing Ramdia and others from the suit land except in due course of law vide judgment & decree dated 29.03.2007. Sudhan during his lifetime executed a registered Will dated 04.04.2006 in favour of Sultan – proforma defendant No.14. After the death of Sudhan, Sultan-proforma defendant No.14, became owner to the extent of $\frac{1}{2}$ share in the suit property and mutation No. 2502 was sanctioned in his favour. Defendants No.1 to 13 were asked by the plaintiff many a times to hand-over the vacant possession of the land in dispute to the plaintiff, however, they kept putting of the matter on some pretext or the other. On 21.03.2010, when the defendants finally refused to admit the claim of the plaintiff, they were left with no other option but to institute the suit in question.

On being put to notice, the defendants by way of their written statements submitted that the plaintiff and Sudhan or their predecessors-in-interest were not owners of the suit property as they had never been in possession in any capacity over the suit property including the old Khasra numbers in lieu of which the suit property had been allotted new khasra numbers during consolidation. It was submitted that the revenue entries showing the name of the plaintiff and Sudhan in the column of ownership was against law and facts. It was admitted that the defendants had filed

Civil Suit No. 464 of 2000, which had been dismissed by the learned Civil Judge (Jr. Divn.), Panipat, vide judgment & decree dated 21.09.2006. It was also submitted that it was a matter of record that in the appeal preferred to impugn the order of dismissal dated 21.09.2006, the same had been partly allowed holding the answering defendants to be in possession, wherein, it had also been ordered that the possession could be taken from the defendants only in due course of law. It was still further submitted that the relief of declaration of title of the defendants had been declined in the aforementioned litigation on the sole ground that no suit for declaration of title on the basis of adverse possession was maintainable and the title on the basis of adverse possession could be claimed only in defense. It was also submitted that by stepping into the shoes of their ancestors, the defendants had come into actual physical possession of the suit property of their own, which had now been in their continuous possession for more than 100 years. In short, the defendants asserted their own title over the suit property on the ground that they had been cultivating the suit property in a hostile manner without payment of anything to anyone to the knowledge of all concerned including the plaintiff and Sudhan. As a result of which, the possession of the defendants had ripened into ownership by way of adverse possession. The execution of the alleged Will of the Sudhan dated 04.04.2006 was also denied and it was also submitted that the said Sudhan had no right, title or authority to execute the Will *qua* the suit property. In addition, it was also submitted that Sultan had not acquired any title on the basis of mutation No. 2502.

On the basis of material and evidence led, both the Courts concurrently held that the plaintiff had successfully proved that they along

with defendant No.14 were owners of the suit property and as such they were entitled to decree for possession.

Learned counsel for the defendants while reiterating their submissions and the stand taken before the Courts below, submits that the Courts failed to appreciate that they had been in exclusive and continuous physical possession of the suit land, which stood reflected from the revenue record i.e. Jamabandis, where they had been shown as Kashatkars. It was thus submitted that by virtue of their long, continuous and peaceful possession, which was hostile in nature, they had acquired title to the suit land by way of adverse possession.

Learned counsel for the respondents/caveators while vehemently opposing and refuting the submissions made by the counsel opposite, submits that the concurrent findings recorded by the Courts below, did not suffer from any infirmity and was in consonance with the settled law.

I have heard learned counsel for the parties and perused the material on record.

The defendants have setup a plea of adverse possession in the case in hand and are claiming absolute ownership of the suit land by virtue of their long, continuous and hostile possession.

Before proceeding further, it would be apposite to discuss the doctrine of adverse possession. The doctrine of adverse possession is applied when the original owner of the immovable property leaves his property unattended for a specific period of time. Article 65 of the Limitation Act, 1963, prescribes a period of 12 years for instituting a suit for possession, after expiry of which a person shall have no right of

recovery of possession of his land by virtue of Article 27 of the Limitation Act, 1963.

Adverse possession is based on the principle that the right of a person actually occupying the land and making the best use of it, will prevail over the right of the actual owner of such land. It is a negative and consequential right arising out of the omission on the part of the actual owner to come forward to claim possession of his land from any person having hostile possession of his land by taking recourse to any remedy available to him under the law. The right to ownership arising out of adverse possession, it must be remembered is a piratical right.

The privy council in the case of *Perry vs. Clissold* (1907) held as under:-

“It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the Statute of limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title.”

The person raising plea of adverse possession must thus fulfill the following five requirements:-

- (i) The possession must be open and obvious, which is known to all including the owner;
- (ii) It must be exclusive;
- (iii) It must be hostile to the title of the actual owner;
- (iv) It should continue over such statutory period as may be defined by the Statute of limitations, which in the case in

hand, would be under the Limitation Act of 1963;

(v) It should be continuous and peaceful.

All the aforementioned ingredients must co-exist along with “*Animus Possidendi*” i.e. intention to possess, when a claim of ownership by way of adverse possession is setup. Still further, such possession must start with the wrongful dispossession of the actual owner. It needs to be pointed out here that it is essential to plead and prove all of the above ingredients, in absence whereof the claim of ownership by way of adverse possession would fail. It would also be relevant to observe that equity operates against the person claiming ownership by adverse possession, as title of the owner is sought to be extinguished by such person.

The onus of proving adverse possession, in the case in hand, was on the defendants and defendants alone, which was to be discharged by leading cogent evidence in support thereof. The specific case of the defendants has been that they have been in continuous, exclusive and peaceful possession of the land, which is hostile in nature to the title of the plaintiffs. However, it is pertinent to point out here that the defendants have denied the title of the plaintiffs in their written statement, which without a doubt is inconsistent with the plea of adverse possession, which has been taken by them. Needless to add that whenever a plea of adverse possession is raised, the person taking that plea must firstly admit the title of the actual owner, because it is only then that he can plead his possession to be hostile in nature against the title of the owner.

To prove their possession, the defendants placed on record the Jamabandi for the year 2000-2001 and Khasra Girdawari for the years 2005-

06 & 2014-15, where they have been shown as 'Kashatkars'. Still further, it was argued that a perusal of the judgment dated 21.09.2006, wherein, the defendants were held entitled to be in possession of the suit land, reveals that the predecessors-in-interest of the defendants were in possession of the suit land since a long time. Therefore, the long and continuous possession of the defendants was duly established by them. Having said that, and coupled with the above discussion, adverse possession would commence only with wrongful dispossession of the title owner coupled with actual feasible, exclusive, hostile and continued possession, as has also been held by the Hon'ble Supreme Court in ***Karnatka Board of Wakf Vs. Government of India and Ors. (Civil Appeal No.16899 of 1996) (Dod: 16.04.2004).***

The defendants have neither pleaded nor did they produce any material on record to show that their hostile possession commenced with the wrongful dispossession of the plaintiffs. In the circumstances, mere long and continuous possession would not by itself be a sufficient ground to make out a case of adverse possession. More so, since the defendants are completely silent as to when their hostile possession began.

Moving further, it would be relevant to refer to the deposition of defendant No.11 - Kanwar Bhan, who while stepping into the witness-box as DW-1 deposed that *“the defendants started cultivating the suit land with the consent of Manga & Sudhan”*. Therefore, it is abundantly clear from the deposition of DW-1, that the defendants were in permissive possession of the suit land, rather than adverse possession, as was being pleaded by them. There is nothing to even remotely suggest as to when the permissive possession of the defendants turned adverse to the title of the

plaintiffs. Thus, in the aforementioned circumstances, the plea of adverse possession cannot be sustained.

This Court, thus, has no hesitation in observing that the appellants/defendants have failed to establish their adverse possession by way of any cogent, much less, convincing evidence.

Further more, upon being pointedly asked, learned counsel for the appellants/defendants failed to refer to anything on record to show that the conclusions arrived at by the Courts below were either contrary to the record or suffered from any material illegality. Still further, no question of law, much less, substantial question of law arises for consideration in the present appeal. The appeal, being devoid of merit, is accordingly dismissed. The judgments and decrees of the Courts below are affirmed.

(MANJARI NEHRU KAUL)
JUDGE

April 26, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*