

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

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RSA No.304 of 2022 (O&amp;M)

Reserved on : 17.02.2023

Date of Decision : 14.03.2023

Asha Jindal

....Appellant

VERSUS

Kirna Rani and Others

...Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Anil Shukla, Advocate for the appellant.

**ALKA SARIN, J.**

The present appeal has been preferred by defendant No.2-appellant against the the judgments and decrees dated 20.11.2018 and 09.12.2021 passed by the Courts below decreeing the suit of the plaintiff-respondent No.1.

The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 filed a suit for possession of the *Chubaras* as described fully in the plaint on the basis of two sale deeds dated 19.06.2009 and 16.03.2015. It was averred by the plaintiff-respondent No.1 that originally Sanjiv Kumar, the brother of defendant No.1 (since deceased), was the owner in possession of two shops situated on Sangrur Road on the basis of sale deeds dated 04.12.1989. It was further the case that Sanjiv Kumar purchased the shops from one Niwas Chaudhary and thereafter constructed two *Chubaras* over the said shops. It was further the case that Sanjiv Kumar sold one of the shops measuring 251 sq. feet vide registered sale deed no.1003 dated 19.06.2009 along with *Chubara* and also sold another shop

measuring 25.86 sq. yards along with *Chubara* vide sale deed no.2783 dated 16.03.2015. The plaintiff-respondent No.1 claimed herself to being the owner of the shops and *Chubaras* on the basis of the two registered sale deeds executed in her favour by the original owner. The plaintiff-respondent No.1 further averred that the defendant No.2-appellant and defendant No.1 (since deceased) were in illegal and unauthorized possession of the *Chubaras* constructed on the two shops purchased by her from Sanjiv Kumar. The defendant No.2-appellant and defendant No.1 (since deceased) filed a joint written statement and took the stand that they were not in possession of any property mentioned in the head-note of the plaint. It was further averred that a false story had been concocted in connivance with Sanjiv Kumar and that actually the property had been purchased by Bhim Sain Jindal, father of Sanjiv Kumar and defendant No.1 (since deceased), vide two sale deeds dated 04.12.1989 even though the same were got executed in the name of Sanjiv Kumar. It was further the stand that defendant No.1 (since deceased) constructed a residential portion on the shops purchased by Bhim Sain Jindal on the basis of the said sale deeds about 25 years back and since then they have been residing in the residential portion. It was further the stand that in an oral family settlement the residential portion fell to the share of Kanta Devi, mother of defendant No.1 (since deceased), and with the help of his mother he had constructed the residential portion and Kanta Devi was residing with the family of defendant No.1 (since deceased). It was further the stand that Sanjiv Kumar had no concern with the adjoining shop of Tarsem Lal and also with the first floor of the shops purchased by Bhim Sain Jindal and that the plaintiff-respondent No.1 and her husband were well aware of this fact and that Kanta Devi was

the owner of the shop adjoining the shop of Tarsem Lal. The further stand taken by the defendants was that defendant No.2-appellant was in peaceful, continuous, uninterrupted possession of the residential portion existing on the first floor for the last more than 20 years to the knowledge of the plaintiff-respondent No.1 and had thus become owner by way of adverse possession. Replication was filed. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled for possession as prayed for ? OPP
2. Whether the present suit is within limitation ? OPD
3. Whether the plaintiff has not valued the suit property properly for the purpose of Court fee and jurisdiction ? If so its effect ? OPD
4. Relief.

The Trial Court vide judgment and decree dated 20.11.2018 decreed the suit of the plaintiff-respondent No.1. Aggrieved by the said judgment and decree both the defendants jointly preferred an appeal which was dismissed vide judgment and decree dated 09.12.2021. The present regular second appeal has been preferred only by defendant No.2-appellant. The legal representatives of defendant No.1 have been impleaded as proforma respondents in the present appeal.

Learned counsel for the defendant No.2-appellant would contend that defendant No.1 (since deceased) had constructed the residential portion which had fallen to the share of his mother in an oral family settlement and that the construction had been carried out by defendant No.1 (since deceased). It is further the contention that the defendant No.2-

appellant had become owner of the suit property by way of adverse possession. On a pointed query by this Court as to whether the defendant No.2-appellant was admitting the ownership of the plaintiff-respondent No.1 because only if the ownership was admitted could the plea of adverse possession be taken, the learned counsel for the defendant No.2-appellant has contended that the said plea has been taken in the alternative. Learned counsel has not been able to show any evidence on the record qua the oral family settlement or any evidence to substantiate his plea of adverse possession. Though it has been argued that the defendant No.2-appellant has been in possession for the last more than 20 years, however, there is not an iota of evidence on the record to show the possession of the defendant No.2-appellant. Rather, none of the ingredients of adverse possession have been proved.

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."*

In the present case the defendant No.2-appellant has failed to lead any substantial evidence to prove her plea of adverse possession. Counsel for the defendant No.2-appellant has not been able to refer to any evidence, oral or documentary, led by the defendant No.2-appellant to prove that her possession was *nec vi, nec clam, nec precario*, i.e. peaceful, open and continuous. A person seeking to establish his adverse possession has to show that his possession is adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

Further, a perusal of the judgments and decrees passed by both the Courts below would reveal that contradictory stands had been taken by the defendant No.2-appellant and none of which had been substantiated by leading any cogent evidence. Further still, the sale deeds in favour of the plaintiff-respondent No.1 executed by Sanjiv Kumar, who is the owner on

the basis of the sale deeds dated 04.12.1989, have never been challenged by the defendant No.2-appellant.

Both the Courts below have returned concurrent findings of fact which call for no interference in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The present regular second appeal, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

( ALKA SARIN )  
JUDGE

14.03.2023

jk

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