

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-17492 of 1994 (O&M)

Reserved on 06.12.2023.

Date of Decision:22.12.2023

Khazan Singh and others

... Petitioners

Versus

The Commissioner, Hisar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Deepak Singh Saini, Advocate,
for the petitioners.

Mr. P. P. Chahar, DAG, Haryana

SUDEEPTI SHARMA, J.

1. The petitioners in the present writ petition have assailed the order dated 09.11.1994 (Annexure P-6) passed by the Commissioner, Hisar Division, Hisar, whereby the revision petition under Section 13-A of the Haryana Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred to as "the Act of 1961") against the order dated 28.07.1992 of the Collector, Jind, filed by one Baru, has been decided against the petitioners.

2. The brief facts of the present case are that the petitioners herein filed a suit for declaration under Section 13-A of the Act of 1961 and the Assistant Collector 1st Grade, Jind, decreed the suit on 29.08.1986. Aggrieved against the same, respondent No.4 (Baru son of Lehri) filed an appeal before the Collector, Jind, who remanded the said appeal to the Assistant Collector 1st Grade, Jind, vide

order dated 04.08.1987 to give a well reasoned finding issuewise. Assistant Collector 1st Grade, Jind, decided the case on 26.10.1987 in favour of the petitioners. Respondent No.4 (Baru) went to the Court of Collector concerned, who vide the order dated 25.04.1988 set aside the order of the Assistant Collector 1st Grade and directed the Assistant Collector 1st Grade to give a self-contained finding on every issue. The petitioners filed application under Section 152 of the CPC and prayed for the amendment of the judgment dated 04.08.1987 passed by the Collector, Jind. The Collector concerned amended his own judgment on 31.05.1988. Respondent No.4 (Baru) approached the court of Commissioner who remanded the same vide his order dated 18.09.1989. The Court of the Commissioner came to the conclusion that the Collector has erred in treating the application under Section 152 of the CPC as an issue of clerical mistake and he directed the Collector concerned to decide the case within 60 days. The learned Collector, Jind, on the basis of remand order decided the case vide order dated 28.07.1992. According to this decision, the appeal of respondent No.4 (Baru) was dismissed. Respondent No.4 (Baru) assailed order dated 28.07.1992 of the Collector, Jind, by filing the revision petition before the Commissioner, Hisar Division, Hisar. The revision filed by respondent No.4 has been decided in his favour vide order dated 09.11.1994 by concluding that the petitioners could not prove their title by virtue of their adverse possession for 50 years because they could not produce any documentary evidence in respect of their possession.

3. The order dated 09.11.1994 passed by the learned Commissioner concerned in the revision petition under Section 13 of the Act of 1961, is impugned in the instant writ petition.

4. Learned counsel for the petitioners contend that the impugned order of the learned Commissioner is non-speaking and non-reasoned, since the Commissioner did not discuss the evidence produced by the petitioners.

5. *Per contra*, Mr. P. P. Chahar, learned DAG, Haryana has argued on the lines of the impugned order dated 09.11.1994 (Annexure P-6).

6. We have heard learned counsel for both the parties and have perused the impugned order and the records as available on the case file, we conclude as under:-

i) In the present case Section 7 of the Act of 1961 is relevant and therefore the same is reproduced as under:-

“7. Power to put Panchayat in possession of certain lands.-- (1)
An Assistant Collector of the first grade having jurisdiction in the village may, either suo moto or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer, or any other Officer authorised by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immoveable property in the shamilat deh of that village which vests or is deemed to have been vested in the Panchayat under this Act and put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Haryana Tenancy Act, 1887.

Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the first

grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.”

A perusal of the aforesaid proviso to Section 7 of the Act of 1961 shows that the question of title if raised that should be proved on the basis of documents.

ii) A perusal of the impugned order shows that the petitioners admitted in the revision petition that they have constructed the boundary wall of the disputed land only 8 to 10 years back (i.e. from the time when the impugned revision petition was heard on 09.11.1994). Therefore, the contention of the petitioners of adverse possession of 50 years was not proved by producing any cogent and documentary evidence.

iii) The Hon'ble Supreme Court of India in a judgment of **State of Rajasthan versus Harphool Singh (Dead) through his Lrs 2000(5) SCC 652** held that a plea of adverse possession cannot be upheld on the basis of vague statement. The relevant paras discussing the title by adverse possession is reproduced as under:-

*“11. So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involve destruction of right/title of the State to immovable property and conferring upon a third party encroacher title where, he had none. The decision in **P. Lakshmi Reddy vs L. Lakshmi Reddy [AIR 1957 SC 314]**, adverted to the ordinary classical requirement - that it should be nec vi nec clam nec precario - that is the possession required must be adequate in continuity, in publicity and in extent to show that it is possession*

*adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus. In the decision reported in **Secretary of State for India in Council vs Debendra Lal Khan (1933) LR (LXI) I.A. 78 (PC)**, strongly relied for the respondents, the Court laid down further that it is sufficient that the possession be overt and without any attempt at concealment so that the person against whom time is running, ought if he exercises due vigilance, to be aware of what is happening and if the rights of the crown have been openly usurped it cannot be heard to plead that the fact was not brought to its notice. In Annasaheb Bapusaheb Patil & Others vs Balwant alias Balasaheb Babusaheb Patil (dead) by Lrs [AIR 1995 SC 895], it was observed that a claim of adverse possession being a hostile assertion involving expressly or impliedly in denial of title of the true owner, the burden is always on the person who asserts such a claim to prove by clear and unequivocal evidence that his possession was hostile to the real owner and in deciding such claim, the Courts must have regard to the animus of the person doing those acts.*

12. *The High Court without even a cursory scrutiny of the legality and propriety of the findings in order to ascertain at least as to whether they are based upon any legally acceptable evidence and the necessary legal ingredients of ‘adverse possession stood substantiated, mechanically seem to have accorded its approval to the claim of title made by the plaintiff merely on the basis that both the courts below have found the plaintiff to be the owner of the property. Indisputably the State was the owner and the question is as to whether its title has been extinguished and the plaintiff had acquired and perfected title to the same by adverse possession. In order to substantiate such a claim of adverse possession the ingredients of open, hostile and continuous possession with the required animus, as*

laid down by Courts should be proved for a continuous period of 30 years. Admittedly, the plaintiff claims to have put up the construction in 1955 and absolutely there is no concrete and independent material to prove the same, except an oral assertion. The story of his father having been there even earlier to 1955 was not projected either before the A.D.M. when the plaintiff submitted his defence, or in the plaint when the suit was filed but for the first time introduced only at the stage of trial when examined as PW1. When the property was a vacant land before the alleged construction was put up, to show open and hostile possession which could alone in law constitute adverse to the State, in this case, some concrete details of the nature of occupation with proper proof thereof would be absolutely necessary and mere vague assertions cannot by themselves be a substitute for such concrete proof required of open and hostile possession. Even if the plaintiffs allegations and claims, as projected in the plaint, are accepted in toto, the period of so-called adverse possession would fall short by 5 years of the required period. There is no scrap of paper or concrete material to prove any such possession of the plaintiffs father nor was there any specific finding supported by any evidence, in this regard. The father of the plaintiff was also an employee of the Telephone Department. It is not as though, if their story of such long possession is true, there would be no correspondence or record to show that his father or the plaintiff were there before 1981. The relevance of the electricity bill to the property in question itself has been questioned and no effort has been taken by the plaintiff to correlate the electricity and water bill to the property claimed by examining any official witnesses connected with those records. While that be the factual position, it is beyond comprehension as to how anyone expected to reasonably and judiciously adjudicate a claim of title by objective process of reasoning could have come to the conclusion that the legal requirement of 30 years of continuous, hostile and open possession with the required animus stood satisfied

and proved on such perfunctory and slender material on record in the case. The first appellate court as well as the High Court ought to have seen that perverse findings not based upon legally acceptable evidence and which are patently contrary to law declared by this Court cannot have any immunity from interference in the hands of the appellate authority. The trial court has jumped to certain conclusions virtually on no evidence whatsoever in this connection. Such lackadaisical findings based upon mere surmises and conjectures, if allowed to be mechanically approved by the first appellate court and the second appellate court also withdraws itself into reclusé apparently taking umbrage under Section 100, Cr.P.C., the inevitable casualty is justice and approval of such rank injustice would only result in gross miscarriage of justice.”

iv) The Hon'ble Apex Court in another judgment in **Annakili versus A. Vedanayagam and others** 2007(4) RCR (Civil) 780 held as under:-

22. *Claim by adverse possession has two elements : (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more do not ripen into a title.*

23. In **Saroop Singh v. Banto & Ors.** [(2005) 8 SCC 330], in which

one of us was a member, this Court held as under:-

29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. (See Vasantiben Prahladi Nayak v. Somnath Muljibhai Nayak, 2004(2) RCR (Civil) 276:2004(3) SCC 376).

30. “*Animus possidendi*” is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See **Mohd. Mohd. Ali v. Jagadish Kalita** Para 21.)”

v) The Hon'ble Apex Court in **P.T. Munichikkanna Reddy and others versus Revamma and others** 2007(6) SCC 59 held that a person in possession of land for over 50 years but not knowing who was the owner-does not become owner by adverse possession. In this context, the relevant paras are reproduced as under:-

“5. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. [See **Downing v. Bird**, 100 So. 2d 57 (Fla. 1958), **Arkansas Commemorative Commission v. City of Little Rock**, 227 Ark. 1085, 303 S.W.2d 569 (1957); **Monnot v. Murphy**, 207 N.Y. 240, 100 N.E. 742 (1913); **City of Rock Springs v. Sturm**, 39 Wyo. 494, 273 P. 908, 97 A.L.R. 1 (1929).]

6. Efficacy of adverse possession law in most jurisdictions

depend on strong limitation statutes by operation of which right to access the court expires through effluxion of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or color of title. (See American Jurisprudence, Vol. 3, 2d, Page 81). It is important to keep in mind while studying the American notion of Adverse Possession, especially in the backdrop of Limitation Statutes, that the intention to dispossess can not be given a complete go by. Simple application of Limitation shall not be enough by itself for the success of an adverse possession claim.

7. *To understand the true nature of adverse possession, **Fairweather v St Marylebone Property Co [1962] 2 WLR 1020, [1962] 2 All ER 288** can be considered where House of Lords referring to **Taylor v. Twinberrow [1930] 2 K.B. 16**, termed adverse possession as a negative and consequential right effected only because somebody else's positive right to access the court is barred by operation of law:*

*"In my opinion this principle has been settled law since the date of that decision. It formed the basis of the later decision of the Divisional Court in **Taylor v. Twinberrow [1930] 2 K.B. 16**, in which it was most clearly explained by Scrutton, that it was a misunderstanding of the legal effect*

of 12 years adverse possession under the Limitation Acts to treat it as if it gave a title whereas its effect is " merely negative " and, where the possession had been against a tenant, its only operation was to bar his right to claim against the man in possession (see loc. cit. p. 23). I think that this statement needs only one qualification: a squatter does in the end get a title by his possession and the indirect operation of the Act and he can convey a fee simple.

If this principle is applied, as it must be, to the Appellant's situation, it appears that the adverse possession completed in 1932 against the lessee of No. 315 did not transfer to him either the lessee's' term or his rights against or has obligations to the landlord who held the reversion. The appellant claims to be entitled to keep the landlord at bay until the expiration of the term by effluxion of time in 1992: but, if he is, it cannot be because he is the transferee or holder of the term which was granted to the lessee. He is in possession by his own right, so far as it is a right: and it is a right so far as the statutes of limitation which govern the matter prescribe both when the rights to dispossess him are to be treated as accruing and when, having accrued, they are thereafter to be treated as barred. In other words, a squatter has as much protection as but no more protection than the statutes allow: but he has not the title or estate of the owner or owners whom he has dispossessed nor has he in any relevant sense an estate "commensurate with" the estate of the dispossessed. All that this misleading phrase can mean is that, since his possession only defeats the rights of those to whom it has been adverse, there may be rights not prescribed against, such, for instance, as equitable easements, which axe no less enforceable against

him in respect of the land than they would have been against the owners he has dispossessed."

*Also see Privy Council's decision in **Chung Ping Kwan and Others v. Lam Island Development Company Limited (Hong Kong) [(1997) AC 38]** in this regard.*

9. *Therefore, to assess a claim of adverse possession, two-pronged enquiry is required:*

1. Application of limitation provision thereby jurisprudentially "willful neglect" element on part of the owner established. Successful application in this regard distances the title of the land from the paper-owner.

2. Specific Positive intention to dispossess on the part of the adverse possessor effectively shifts the title already distanced from the paper owner, to the adverse possessor. Right thereby accrues in favour of adverse possessor as intent to dispossess is an express statement of urgency and intention in the upkeep of the property.

It is interesting to see the development of adverse possession law in the backdrop of the status of Right to Property in the 21st Century. The aspect of stronger Property Rights Regime in general, coupled with efficient legal regimes furthering the Rule of Law argument, has redefined the thresholds in adverse possession law not just in India but also by the Strasbourg Court. Growth of Human Rights jurisprudence in recent times has also palpably affected the developments in this regard."

7. A perusal of the verdicts of the Hon'ble Apex Court (supra), concludes that the essential ingredient for establishing adverse possession against any individual, the requirement is the possession of minimum 12 years and in case of

the Government, it is a period of 30 or more and in the present case, the petitioners were having the possession of the disputed lands for a period of about 8 to 10 years.

8. A perusal of order dated 09.11.1994 (Annexure P-6) shows that the petitioners could not produce any documentary evidence to prove their possession over the disputed land for the last 30 years, which is the requirement of proviso to Section 7 of the Act of 1961.

9. In view of the discussion made above, the present writ petition is dismissed. The impugned order 09.11.1994 (Annexure P-6) is affirmed.

10. Since the main petition is decided, all the pending applications are disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 22, 2023
dinesh

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No