

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

**RSA-1432-2020 (O&M)
Date of decision: 07.02.2023**

Chander Singh (since deceased) through LRs and another

...Appellants

V/S

Hajura Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ashok Arora, Advocate,
For the appellants.

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, plaintiffs are in second appeal before this Court assailing learned trial Court judgment and decree dated 24.12.2015, as upheld by learned First Appellate Court vide its judgment and decree dated 28.11.2019, dismissing the suit for declaration with consequential relief of permanent injunction filed by appellant/plaintiffs.

3. Briefly stated, facts as noticed by Courts below are that plaintiffs are farmers by profession and the livelihood of the plaintiffs' families depend upon the income from agriculture. Besides the suit land, plaintiffs have also other agricultural land. The uncle of plaintiffs, namely, Ram Chander vide sale deed No.1252 dated 25.08.1966 sold land measuring 22K-18M to one Ram Sarup for sale consideration of Rs.4,000/-. Plaintiffs challenged the said sale by filing pre-emption suit, which was decreed in favour of plaintiffs on 03.06.1968. The possession of the land was taken over by plaintiffs on 20.07.1968 and since then they are in possession of this entire land measuring 22K-18M. Later on, defendants

filed Civil suit seeking possession of half share in land measuring 11K-18M *qua* the share of their mother Smt. Chooto. On dismissal of their suit, the defendants filed an appeal against the judgment and decree dated 05.08.1972 and the same was accepted on 09.05.1975 and their suit was decreed *qua* land measuring 11K-09M out of total land measuring 22K-18M which had been purchased by plaintiffs in the pre-emption suit. However, in that suit, the defendants did not seek any declaration with regard to the ownership of suit land and setting aside the decree in pre-emption suit and never took the possession of land in favour of the plaintiffs. They (the plaintiffs) are in actual/physical possession of the suit land and they throughout continued to enjoy the possession of this land without paying any rent or profit thereof. The possession of plaintiffs from 09.05.1975 onwards till date remained exclusive in the knowledge of defendants open, continuous, uninterrupted, adverse and hostile in animus to the interest of defendants. By virtue of this continuous and adverse possession for more than 30 years, plaintiffs have acquired the status and title of ownership *qua* the land and they are liable to be declared as the owners of the suit land and the entries of the ownership of this land in the revenue records are liable to be entered in the names of plaintiffs. Plaintiffs requested defendants for transferring the title of the suit land in their names but to no avail. Hence, the civil suit.

4. Upon notice, defendant/appellants appeared and filed joint written statement taking some preliminary objections on the grounds of time barred; maintainability; locus standi; cause of action etc.

4.1. On merits, it is stated by defendants that they are owners in possession of the disputed land since long. It is pleaded that Ram Chander and defendants are owners to the extent of $\frac{1}{2}$ share in disputed land i.e., 22K-18M. On the basis of suit for pre-emption, no possession was delivered to plaintiffs. Defendants filed a civil suit which was dismissed on 06.06.1972 and appeal was accepted and suit

was decreed vide judgment and decree dated 09.05.1975 by learned First Appellate Court and since then defendants are owners in possession of the suit land. Plaintiffs filed a regular second appeal, which was dismissed vide judgment and decree dated 26.07.1983. Again, plaintiffs preferred second foray of litigation by filing a civil suit, which was also dismissed vide judgment and decree dated 17.01.2009 and in that suit too, plaintiffs unsuccessfully took plea of adverse possession. It is further pleaded that the suit is barred by principle of *res judicata* under Section 11 CPC. Rest of the contentions of plaintiffs were denied and dismissal of the suit was prayed.

5. Replication to the written statement of defendants was filed in which all the contents mentioned therein were denied.

6. Based on the rival pleadings, following issues were framed:

- “1. Whether the plaintiffs are entitled for the relief of declaration as prayed for? OPP.*
- 2. Whether the plaintiffs are entitled for consequential relief of permanent injunction as prayed for? OPP*
- 3. Whether suit of the plaintiffs is false, frivolous and is liable to be dismissed with costs? OPD*
- 4. Whether suit is barred by time? OPD*
- 5. Whether suit is not maintainable in its present form? OPD*
- 6. Whether plaintiffs have no locus standi and cause of action to file the present suit? OPD*
- 7. Whether plaintiffs are estopped from filing the present suit by his own act and conduct? OPD*
- 8. Relief.”*

7. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

8. On appraisal of evidence vis-à-vis pleadings, issues No.1 and 2 were decided against plaintiffs and in favour of defendants. Issues No.3 to 7 were decided against defendants and in favour of plaintiffs. Consequently, suit of the plaintiffs was dismissed with costs.

9. Learned First Appellate Court dismissed the appeal of plaintiffs, resulting in Regular Second Appeal by plaintiffs before this Court.

10. In its judgment, learned First Appellate Court, *inter alia*, observed as below:

“19. In the considered opinion of the court, the plea of the appellants of adverse possession cannot succeed as the possession of the suit land is not open, hostile and undisturbed as the litigation is going on between the parties including confrontations on which the criminal proceedings under Section 107/151 Cr.P.C. had been there. The possession of the appellants is not perfected for declaration on the ground of adverse possession. The documentary evidence on the file clearly reveals that the litigation had been there between the parties. Therefore, in view of this, this Court is of the view that the learned Trial Court has rightly returned its findings under the issues No.1 and 2. There is no illegality in the same. Therefore, it is affirmed.

20. The findings under issues No.3 to 7 has not been assailed during the course of arguments, therefore, these are also affirmed.

21. The legal position of the authority relied upon by the learned counsel for the appellants is not disputed, but with due regards, the facts of the authority do not completely tally with the facts of the present case, therefore, this authority is not fully applicable in this case.

22. The net result is that the appeal of the appellants fails and is therefore dismissed with no order as to costs.”

11. I have heard the learned counsel for appellants and perused the judgments of both the Courts below.

12. The mainstay of the appellants' case is that they had proved their adverse, uninterrupted and hostile possession to the knowledge of the respondent-defendants for over 30 years and had perfected their title and; that the Courts below erred in rejecting the said claim. In my opinion, the contention is not

duly considered this contention and rejected it by giving cogent and convincing reasons consistent with record. I find no reason to differ with their concurrent findings of fact. Resultantly, I am unable to accept the contention of the learned counsel for the appellants that.

13. My considered opinion is that the submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law, with which I am inclined to agree.

14. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

15. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

16. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

17. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

18. Pending application/s, if any, shall also stand disposed of.

19. No order as to costs.

(ARUN MONGA)
JUDGE

February 07, 2023

Vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No