

RSA-2268-1992 (O&M)

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R-365

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2268-1992 (O&M)
Date of Decision : 21.03.2023

Hira Lal (deceased) through LRs

....Appellants

VERSUS

Ram Chand

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Bhardwaj, Advocate for
Mr. Aditya Jain, Advocate for the appellants.

Mr. Adarsh Jain, Advocate for the respondents.

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ALKA SARIN, J. (Oral)

The present appeal has been preferred by the plaintiff-appellants against the judgment and decree dated 08.08.1992 passed by the First Appellate Court.

The brief facts relevant to the present *lis* are that the plaintiff-appellants filed a suit for pre-emption on the ground of being tenants in possession in the suit property. In the alternate a plea was taken that plaintiff-appellants have become owner by way of adverse possession as they are in possession of the land in dispute in their own rights since long. The defendant-respondents contested the suit wherein they admitted the factum of sale but denied all other averments. They denied that the plaintiff-

appellants were tenants and further raised the plea that the plaintiff-appellants had relinquished the tenancy rights.

On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiffs have superior right of pre-emption against the defendants ? OPP
2. Whether the sale price was fixed in good faith and was actually paid to the vendor ? OPP
3. If Issue No.2 is not proved, what was the market value of the suit property at the time of sale ? OPP
4. Whether the defendants are entitled to stamp and registration charges, if so to what amount ? OPD
5. Whether the suit is not maintainable ? OPD
6. Whether the plaintiffs have no locus-standi to file this suit ? OPD
7. Whether the plaintiffs are stopped from filing the present suit by their act and conduct ? OPD
8. Whether the suit is time barred ? OPD
9. Whether the defendants are entitled to special costs, if so to what amount ? OPD
10. Relief.

The Trial Court, vide judgment and decree dated 02.04.1992, decreed the suit of the plaintiff-appellants. Aggrieved by the same, an appeal was preferred by the defendant-respondents. On issue No.1 i.e. Whether the plaintiff-appellants herein had superior right of preemption, the

First Appellate Court held that in the column of rent in the jamabandies, there was no amount mentioned and that for determination of tenancy the entries in the column of rent are to be read together with other entries in the jamabandi. It was further held that payment of rent indicates the existence of relationship of landlord and tenant and in the absence of any relationship of landlord and tenant being proved the question of pre-emption on the basis of being a tenant would not arise. Qua adverse possession it was held that the plaintiff-appellants had relinquished their rights and even if they were held to be in possession their right was held not to be adverse to the true owner. The appeal of the defendant-respondents was accepted and the suit of the plaintiff-appellants was dismissed. Aggrieved by the said judgment and decree dated 08.08.1992, the present regular second appeal has been preferred.

On 10.12.1992 the following order was passed in the present appeal :

“Notice of motion for 20.01.1993 only on the ground that the appellants’ counsel pleads that the appellants are owners of the property in dispute by way of adverse possession.”

Learned counsel for the plaintiff-appellants would contend that the plaintiff-appellants were in possession of the suit property since long and the possession was adverse to that of the original owner.

Per Contra, learned counsel for the defendant-respondents has contended that there is no pleading to the effect except for para 8 in the plaint where vaguely a plea of adverse possession has been raised.

Heard.

In the present case though initially the suit was filed for preemption, however, in the alternate a plea of adverse possession was raised. Para 8 of the plaint reads as under :

“In the alternative if the plaintiffs are not held to preempt the sale deed in dispute dated 29.11.89 in that case the plaintiffs have acquired ownership rights in the lands in dispute detailed para No.2 of this plaint by way of adverse possession, as the plaintiffs are in possession of the land in dispute in their own rights since long.”

The above reproduced paragraph is the only pleading in the plaint relating to adverse possession.

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 plaint is totally bereft of any pleadings as to how and when the possession of the plaintiff-appellants became adverse. There are no pleadings to the effect that the possession of the plaintiff-appellants was adverse, open and hostile. In the absence of the basic ingredients required for claiming adverse possession, the plea of adverse possession raised by the plaintiff-appellants cannot be accepted. Much emphasis has been laid by the learned counsel for the plaintiff-appellants on the long continuity of possession on the basis of the revenue record. However, in the absence of any pleadings to the effect, no amount or evidence can be looked into.

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In view of the above, the present appeal, which is wholly devoid of any merit, is dismissed. Pending applications, if any, also stand disposed off.

Learned counsel for the defendant-respondents states that vide order dated 21.04.1993 passed by this Court, the plaintiff-appellants were permitted to withdraw the pre-emption amount deposited by them less 1/5 Zara Panjam without prejudice to their rights in this appeal.

Since the present appeal has been dismissed, the plaintiff-appellants would be at liberty to get the remaining amount released in their favour.

March 21, 2023
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(ALKA SARIN)
JUDGE

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