

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

RSA-2581-1989 (O&M)

Reserved on: 03.02.2023

Date of pronouncement: 13.02.2023

Ghasi Ram

...Appellant

Versus

Gopal Inder (since deceased) through LRs and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Om Parkash Sharma, Advocate for the appellant.

Mr. Prateek Mahajan, Advocate with
Mr. Daanish Mahajan, Advocate for the respondents.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Gopal Inder Singh, Surinder Singh sons and Amrit Kaur wife of late Surjit Inder Singh, had brought a suit against defendant Ghashi son of Sheo Chand, seeking possession of a plot fully detailed in headnote of the plaint, situated within revenue estate of Village Khera Khemawati, Tehsil Safidon, District Jind after ordering demolition of the ghair, khor and all other types of construction.

As per case of the plaintiffs, they are owners of the plot in dispute. In a suit earlier filed by defendant regarding this very plot, the Court of Sub Judge, Ist Class, had held the plaintiffs to be owners of the plot, however, the plaintiffs were asked to take possession of

defendant in due course of law, vide judgment and decree dated 03.06.1983 upheld by Ist Appellate Court on 24.08.1984. The plot in dispute is in the shape of ghair and is in the front portion of the building of the plaintiffs. The water from house of plaintiffs flow through this side and there is an obstruction in the flow. The possession of defendant over the plot in dispute is unauthorized, therefore, he is liable to vacate the same.

2. On notice, the defendant appeared and offered a contest by filing a written statement, raising various legal objections, contending that he is in possession of the suit land as a trespasser for the last more than 45 years and prior to him, his predecessor in interest were in possession of the suit land, therefore, he has become owner of the plot by way of adverse possession. On merits, the defendant contended that the previous suit was for grant of permanent injunction in which issue regarding possession was the only relevant issue and not the ownership, therefore, the verdict given with regard to ownership being irrelevant is not binding on the parties by principle of res-judicata. The plea of adverse possession was not taken by the answering defendant who was plaintiff in that suit and no such issue was framed. Now the defendant is not debarred from taking that plea. Therefore, the plaintiffs have no right to take possession from the defendant. The defendant prayed for dismissal of the suit.

3. The plaintiffs filed replication, controverting the allegations in the written statement whereas reiterating the averments

in the plaint.

4. From the pleadings of the parties, following issues were framed:-

1. *Whether the plaintiffs are the owners of the property in dispute as alleged? OPP*
2. *Whether the plaintiffs are entitled for the possession? OPP*
3. *Whether the suit is time barred? OPD.*
4. *Whether the defendant has become the owner of the suit property by virtue of adverse possession? OPD.*
5. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction?*
6. *Relief.*

5. Parties were afforded adequate opportunities to lead evidence in support of their respective claims.

6. After hearing arguments, the trial Court of Sub Judge, Ist Class, Safidon decided issues No.1 to 4 in favour of the plaintiffs and against the defendant; issue No.5 was decided in favour of the plaintiffs and against the defendant being not pressed by learned counsel for the defendant at the time of arguments. As a result of findings on issue, vide judgment and decree dated 27.01.1989, suit of the plaintiffs was decreed with costs against the defendant and he was directed to hand over the vacant possession of the suit plot to the plaintiffs on or before 28.02.1989 after removing the construction raised by him over the plot in dispute, otherwise, the plaintiffs shall be entitled to seek the possession through the Court by way of execution.

7. Feeling aggrieved by the judgment and decree passed by the trial Court, the defendant had preferred an appeal before District Judge, Jind, who vide judgment dated 21.08.1989 dismissed the same.

8. Still feeling dissatisfied, the defendant has approached this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondent/plaintiffs who have put in appearance through counsel.

9. I have heard learned counsel for the parties besides going through the record.

10. Both the Courts below on proper appraisal, appreciation of evidence and correct interpretation of law have returned concurrent findings that the plaintiffs are owners of the property in dispute of which the defendant is in unauthorized possession. The claim of the defendant that he has become owner of the suit land by way of adverse possession was considered and rejected. Suit was not found to be time barred and the plaintiffs were found entitled to possession of the suit property from the defendant.

11. Learned counsel for the appellant has argued that the defendant has constructed his house over the common land, therefore, he is protected under Section 4 of the Punjab Village Common Lands (Regulation) Act, 1961, however, I am not impressed by this arguments. This plea is being put-forward for the first time in this Court without their being any pleading in that regard or evidence in that respect adduced by the defendant. The consistent stand of defendant has been that he has been in continuous open and hostile possession of the suit land to the knowledge of the owners for the last more than 12 years, therefore, he has become owner by adverse

possession. Whereas, the plea now put-forward is in complete contrast to the consistent stand taken by the defendant before the trial Court, Ist Appellate Court and even before this Court. Therefore, this plea is not found to have any force.

12. On the other hand, learned counsel for the respondents while referring to judgments Harnam Kaur & Ors. Vs. Malkiat Singh & Ors., 1986 RRR 61, has submitted that the plaintiffs have approached the Court seeking possession in question on the point of title and no limitation is prescribed in filing of the suit on the basis of title. The next judgment referred to by him was Shri Uttam Chand (D) through LRs Vs. Nathu Ram (D) through LRs & Ors., 2020(3) JKJ 328 to the effect that long continuous possession is not sufficient to claim adverse possession.

13. The judgments passed by both the Courts below are quite detailed, well reasoned and I find myself in agreement with conclusions drawn by the Courts below and I am not inclined to interfere with such judgments while hearing Regular Second Appeal, which is found to be without merit. No substantial question of law arises in this appeal. The appeal is found to be without merit and is dismissed accordingly.

13.02.2023

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No