

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.45 of 2023

Reserved on : 09.01.2023

Date of Decision : 13.01.2023

Kuldeep Kumar Sharma

....Appellant

VERSUS

RBL Banarsi Dass Trust Society Registered

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Avnish Mittal, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been preferred by the defendant-appellant against the judgments and decrees dated 16.05.2016 and 30.08.2022 passed by the Trial Court and the lower Appellate Court, respectively, whereby the suit filed by the plaintiff-respondent was decreed and the appeal filed by the defendant-appellant was subsequently dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-respondent (RBL Banarsi Dass Trust Society) is a registered Trust which is owner of House No.4291 and House No.4291/2, behind B.D. Senior Secondary School, Cross-Road No.2, Ambala Cantt. One Hans Raj Sharma (father of the defendant-appellant) was a tenant in House No.4291 under the plaintiff-respondent Trust and after his death his son occupied it as tenant. The adjoining portion of House No.4291 i.e. House No.4291/2 was occupied by one Amar Nath Sharma, maternal uncle of the defendant-appellant, at a monthly rent of Rs.50/-. The said Amar Nath Sharma died without leaving any Class-1 legal heir. After his death, the defendant-appellant is stated to have occupied the said portion i.e. House No.4291/2 and started paying rent

for the same against receipts after signing the counterfoils of the rent receipts either himself or through his wife, namely, Chhaya Sharma.

On 21.04.2005 the plaintiff-respondent filed a civil suit [Civil Suit No.18 of 2005] for permanent injunction against the defendant-appellant in respect of both the properties i.e. House Nos.4291 and 4291/2 which was decreed vide judgment and decree dated 06.06.2007. The appeal filed by defendant-appellant against the said judgment and decree was dismissed vide judgment dated 17.01.2008.

The plaintiff-respondent Trust also filed an ejectment petition against the defendant-appellant qua House No.4291 and the same was dismissed vide order dated 28.02.2009 passed by the Rent Controller. An appeal against the said order dated 28.02.2009 was accepted by the Appellate Authority vide its order dated 21.01.2010. Thereafter, a revision petition was filed being CR-3504-2010 [Kuldeep Kumar Sharma vs. R.B.L. Banarsi Dass Trust Society Regd.] which was dismissed by this Court vide judgment dated 03.05.2011. The defendant-appellant filed SLP No.2034 of 2011 which was also dismissed vide order dated 05.08.2011 granting the defendant-appellant 9 months' time to vacate the suit property therein i.e. House No.4291. The said House No.4291 was vacated in May, 2012.

The plaintiff-respondent Trust also filed an ejectment petition for eviction of the defendant-appellant from the portion of the property bearing House No.4291/2. The defendant-appellant denied himself to being a tenant in House No.4291/2. The said ejectment petition was dismissed by the Rent Controller vide order dated 09.04.2010 holding that the defendant-appellant did not inherit the tenancy rights of the said portion after the death of Amar Nath Sharma and therefore he was not the tenant under the

plaintiff-respondent Trust. The appeal filed by the plaintiff-respondent Trust was dismissed on 25.01.2013.

In April 2013 the present suit for recovery of possession of House No.4291/2 and mesne profits for the use and occupation of the premises for the period from 22.04.2010 to 21.04.2013 was filed by the plaintiff-respondent Trust. On notice, the defendant-appellant appeared and filed his written statement alleging therein that he had taken forcible possession of the suit property by breaking the locks in June 1995 and his possession was hostile, continuous, uninterrupted and peaceful to the knowledge of the plaintiff-respondent Trust and hence his possession has matured into ownership by way of adverse possession. Replication was filed by the plaintiff-respondent Trust reiterating the averments made in the plaint. On the basis of the pleadings of the parties the following issues were framed by the Trial Court :

1. Whether the plaintiff is in possession over the suit property as prayed for as well as for recovery of Rs.2000/- per month as future mesne profits ? OPP
2. Whether the suit is not maintainable in the present form ? OPD
3. Whether the plaintiff has no locus standi to file the present suit ? OPD
4. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction ? OPD
5. Whether the plaintiff has concealed true and material facts from the Court ? OPD
6. Whether the suit is barred by limitation ? OPD
7. Relief.

The Trial Court vide its judgment and decree dated 16.06.2016 decreed the suit filed by the plaintiff-respondent Trust and held it entitled to mesne profits @ Rs.50/- per month from 22.04.2010 upto the date of delivery of actual possession of the suit property. Aggrieved by the said judgment and decree dated 16.05.2016, an appeal was preferred by the defendant-appellant which appeal was dismissed by the lower Appellate Court vide its judgment and decree dated 30.08.2022. Hence, the present regular second appeal by the defendant-appellant.

The only argument of learned counsel for the defendant-appellant is that his possession of the suit property has matured into ownership by way of adverse possession. Learned counsel for the defendant-appellant would further contend that since possession of the defendant-appellant has been hostile, continuous and uninterrupted, the suit of the plaintiff-respondent Trust deserved to be dismissed and ought not to have been decreed.

I have heard learned counsel for the defendant-appellant.

In the present case the defendant-appellant filed a written statement in the earlier Civil Suit No.18 of 2005 filed by the plaintiff-respondent Trust (Ex.P20) wherein he stated that he is in occupation of the portion earlier possessed by his uncle, Amar Nath Sharma. He further stated that the name of his wife was Chhaya Sharma. He admitted that the rent receipts were signed by Shri Shyam Bihari, who used to collect the rent. In his said written statement no such stand of having become owner of the suit property by way of adverse possession was taken. Rather, the defendant-appellant denied that he was un-authorizedly holding the suit property. After passing of order dated 25.01.2013 by the Appellate Authority in the

ejectment petition for eviction of the defendant-appellant from the portion of

the property bearing House No.4291/2, the plaintiff-respondent Trust issued a legal notice dated 12.03.2013 (Ex.P3) directing the defendant-appellant to hand over vacant possession of the suit property to the plaintiff-respondent Trust which was duly replied to by the defendant-appellant.

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-appellant has failed to lead

any substantial evidence to prove his plea of adverse possession. Counsel for

the defendant-appellant has not been able to refer to any evidence, oral or documentary, led by the defendant-appellant to prove that his 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.

In view of the discussion above, I do not find any ground to interfere in the concurrent findings of fact returned by both the Courts below. No question of law much-less any substantial question of law arises for determination in the present appeal. The regular second appeal, which is wholly devoid of any merits, is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

13.01.2023
jk

(ALKA SARIN)
JUDGE

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