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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-3428-1985 (O&M)

Date of decision: 19.07.2024

Lekh Ram and others

...Appellants

Versus

Ami Lal (deceased) through his LRs

...Respondents.

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Jai Vir Yadav, Sr. Advocate with
Mr. Nitish Sharma, Advocate and
Ms. Parul Sharma, Advocate and
Mr. Chetan Das Ranga, Advocate for the appellants.

Ms. Himani Sarin, Advocate for respondent No.1.

Mr. Amit Jhanji, Sr. Advocate with
Ms. Eliza Gupta, Advocate and
Mr. Hakikat Singh Grewal, Advocate
for applicant/respondent No.2
(In CM-4173-C-2011)

VIKAS BAHL, J. (ORAL)

This judgment has been divided into the following sections:-

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CM-4173-C-2011

1. This is an application filed under Order 1 Rule 10 read with Section 151 CPC for impleadment of the applicants namely (I) Dr. Mrs. Amarjit Singh wife of Late Dr. Amarjit Singh and (II) Dr. Vanit Nalwa daughter of late Dr. Amarjit Singh, both residents of #S-64, Panchseel Park, New Delhi as respondents.

2. Learned Senior Counsel for the applicants has submitted that although by virtue of the present application, two persons were sought to be impleaded but the present application be only considered for impleading applicant No.(ii) i.e. Dr. Vanit Nalwa daughter of late Dr. Amarjit Singh as the applicant No.(i) Dr. Mrs. Amarjit Singh has died. It is submitted that father of Dr. Vanit Nalwa-applicant and applicant No.(i) had purchased a part of the suit property vide registered sale deeds dated 17.11.1989 and 15.05.1998 respectively and that the father of the applicant had executed registered Will in her and her mother's favour and she has substantial interest in the property in question and thus, she also be given an opportunity of hearing.

3. Learned Senior Counsel for the applicant has submitted that the present application although has been filed under Order 1 Rule 10 CPC but the same be treated as an application under Order 22 Rule 10 of CPC.

4. Learned Senior Counsel for the appellants has submitted that in case the said application is allowed the applicant should not be permitted to raise any independent plea as at best even as per her own case, she has stepped into the shoes of respondent No.1 and at best can only assist the Court on the dispute between the original plaintiff and defendants.



5. Keeping in view the abovesaid facts and circumstances and the provisions of Order 22 Rule 10 CPC, the present application is allowed and the applicant namely Dr. Vanit Nalwa daughter of late Dr. Amarjit Singh, resident of #S-64, Panchseel Park, New Delhi is ordered to be impleaded as respondent No.2 in the main Regular Second Appeal and the same would be subject to the right of the said applicant to assist the Court and raise pleas within the parameters of the provisions of Order 22 Rule 10 CPC.

MAIN CASE

CHALLENGE IN THE INSTANT SECOND APPEAL:-

1. LRs of defendant No.1 and other defendants have filed the present Regular Second Appeal for setting aside the judgment and decree dated 19.04.1984 passed by the trial Court vide which the suit filed by the plaintiff/respondent No.1 for declaration to the effect that he was owner in possession of the suit land measuring 4 bighas 2 biswa comprised in Khewat No.21, Khata No.88, Khasra No.772(1-5), 773(2-17) situated in Village Nathu Pur, Tehsil and District Gurgaon by virtue of being in adverse possession for a period of more than 12 years, has been decreed. Challenge is also to the judgment and decree dated 11.10.1985 passed by the First Appellate Court vide which the appeal filed by the present appellants has been dismissed.

ARGUMENTS PUT FORTH ON BEHALF OF THE APPELLANTS:-

2. Learned senior counsel for the appellants has submitted that the primary reason given by both the Courts for holding that the respondent-plaintiff was entitled to claim ownership on the basis of adverse possession, was the assumption that consolidation proceedings had taken place and in



the said consolidation proceedings, the suit property had been allotted to Ram Chand, predecessor-in-interest of the present appellants-defendants and in the re-partition proceedings, the predecessor-in-interest of the plaintiff Jia Ram was not dispossessed and thus, his possession became adverse from the said date. It is submitted that no such order of allotment in favour of Ram Chand has been produced and even the record of the consolidation proceedings has not been produced by the plaintiff and thus, there is no basis for the said observation. It is submitted that in the plaint also, there is no specific date as to when the consolidation proceedings had taken place or that as to on what date, the suit land was allotted to said Ram Chand and on what date, the predecessor-in-interest of the respondents/plaintiff had refused to hand over the possession of the suit land to the predecessor of the appellants/defendant and that PW-1 in his cross-examination had stated that he is not aware as to whether Ram Chand defendant was put as owner of the land in dispute at the time of consolidation or not and thus the same demolishes the case of the plaintiff. It is argued that in fact in response to the pleadings, the present appellants had specifically stated that it was not admitted that before the consolidation proceedings, the plaintiff was in possession of suit land and that the land was allotted in favour of Ram Chand. It is submitted that it was averred by the appellants-defendants that Ram Chand was the owner of the suit land and after his death, the present appellants being his legal representatives have become the owner. It is further highlighted that it was specifically averred that it was totally incorrect to suggest that Ram Chand had ever asked Jia Ram to hand over possession of suit land from Jia Ram or that Jia



Ram continued to remain in possession thereof. It is argued that the plea of adverse possession, as per settled law, is to be specifically averred and proved and the impugned judgments of both Courts based on presumptions deserve to be set aside on the said ground alone.

3. Learned senior counsel for the appellants has further submitted that in the present case, the plaintiff is claiming his possession of the suit land for the last 25 years from the date of filing of the suit i.e., 05.08.1981 i.e., from 1955-56. Reference has been made to the jamabandi produced by the plaintiff himself to show that in the jamabandi for the year 1961-62 (Ex.P3), jamabandi for the year 1965-66 (Ex.P4) and jamabandi for the year 1970-71 (Ex.P5), one Chunna and not the plaintiff has been shown to be in possession of the suit land. It is submitted that thus, even as per the documents produced by the plaintiff, it is not shown that the plaintiff was in possession of the suit land for the period of even 12 years prior to the filing of the suit land much less 25 years as per the case set up by the plaintiff. It is submitted that even the plea of continuous possession, much less adverse, stands rebutted from the documents produced by the plaintiff himself and that since there is a presumption with respect to the entries made in jamabandi, thus, the plea of the plaintiff of continuous possession deserves to be rejected on the said ground alone. It is submitted that both the Courts have, even on the said aspect made observations on surmises and conjectures and that there is nothing on record to show that any correction with respect to the said entries was ever carried out at the instance of the plaintiff. It is submitted that on the said ground also, the judgments of both the Courts deserve to be set aside and suit of the plaintiff deserves to be



dismissed.

4. Learned counsel for the appellants has further submitted that the plaintiff Ami Lal had not appeared in the witness box in support of his plea that he was in adverse possession of the land in question for the last more than 12 years and had instead executed power of attorney Ex.P1 dated 06.06.1983 in favour of his attorney to make statement in the Court and that he was present in the Court on the date the statement of the said PW-1 was recorded, which was on 06.06.1983, which was the same date as the date of the power of attorney. It is submitted that the said aspect has also been noticed in the judgment of the 1st appellate Court. It is argued that it is a matter of settled law that in order to prove the facts which are in the special knowledge of a person, the person himself has to appear and in case of non-appearance, the Court is required to draw an adverse inference. It is submitted that once the plaintiff himself was present in the court, then his non-giving of statement is to be taken against him. It is argued that the plea of adverse possession has to be specifically pleaded and proved and once the plaintiff himself has not chosen to come in the witness box, the suit deserves to be dismissed on the said ground alone. In support of his arguments, learned senior counsel for the appellants has relied upon the judgment of the Single Bench of this Court in the case of ***Radhey Shyam vs. Raj Kumar*** reported as ***2010(2) RCR (Civil) 697***.

5. Learned senior counsel for the appellants has also relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***M.Radheshyamlal vs. V Sandhya and another*** reported as ***2024 SCC Online SC 318*** to contend that a plea of adverse possession seeks to defeat



the rights of the true owner and thus, the same should not be readily accepted unless a clear and cogent basis has been made out in the pleadings and established in the evidence and that it was further observed that the said plea defeats the rights of true owners and therefore, there is no equity in the favour of the person pleading/claiming adverse possession and that the possession is required to be hostile, open and continuous and the person claiming adverse possession has to clearly assert hostile title in denial of the title of the true owner and merely because a person is in possession for a long time he would not acquire title thereto. It is further highlighted that specific ingredients which are required to be pleaded and proved, have also been given in the said judgment and in the present case, neither specific pleas nor evidence in support of the said pleas has been led on behalf of the plaintiff. Further, reliance has also been placed by the learned Senior counsel for the appellants upon the judgment of the Hon'ble Supreme Court in *T.Anjanappa and others vs. Somalingappa and another* reported as **2006(7) SCC 570** and on the judgment of the Single Bench of this Court in *Sandeep and others vs. Fateh Singh and others*, reported as **2017(1) PLJ 51**. It is submitted that it has been observed in the judgment of the learned Single Judge that it is relevant to see as to whether the possession of the plaintiff is shown to be adverse (Mukhalfana) in the revenue record and that mere entry of Gair Marusi goes against the plea of adverse possession. It is further submitted that pleadings and evidence of the parties have been misread and misconstrued resulting in a perverse finding and that the suit of the plaintiff was meritless and should have been dismissed and the judgments of both the Courts, decreeing the suit of the plaintiff, deserve to



be set aside.

ARGUMENTS PUT FORTH ON BEHALF OF THE RESPONDENTS:-

6. Learned senior counsel/counsel for the respondents have submitted that the judgments of both the Courts are in accordance with law. The pleadings of the parties have been highlighted by them and specific reference has been made to paragraphs 2 and 2(a) of the plaint to show that the plea with respect to possession and consolidation of holdings and also with respect to allotment in favour of Ram Chand, predecessor-in-interest of defendants has been made. It is submitted that in the written statement filed, in paragraph 2 of the preliminary objections, the plea taken by the defendants is that the plaintiff was a tenant and the defendant was the landlord and thus, the possession of the plaintiff was permissive and that the Civil Court had no jurisdiction to try the suit. It is argued that thus, the possession of the plaintiff has been admitted by the defendant. Further reference has also been made to paragraphs 2 and 2(a) of the reply on merits to show that the pleadings of the plaintiff in the plaint have not been specifically denied and thus, the possession of the plaintiff as well as the other ingredients as are required to be pleaded and proved for claiming ownership on the basis of adverse possession have been admitted by the defendants. It has further been argued on behalf of respondents that the plaintiff Ami Lal is son of Jia Ram and Jia Ram is son of Jahri and Jahri is son of Shatru and that as per the jamabandi for the years 1956-57 (Ex.P2), the possession of Jia Ram son of Jahri has been shown. It is submitted that in the jamabandis referred to by the learned senior counsel for the



appellants, although the name of Chuna has been mentioned but his father's name has been mentioned as Jahri and apparently, the same seems to be an error in the said jamabandis and in the subsequent jamabandi for the years 1980-81, the name of Ami Lal is mentioned. Reference has also been made to the statement of Lekh Ram who had appeared as DW-1 to highlight the fact that in his cross-examination said DW-1 has stated that he is not aware as to whether the land in question was allotted to Ram Chand in block bandi or not and that the land in dispute was presently in cultivating possession of Ami Chand and that Ami Lal and Jia Ram have been cultivating the land on their behalf.

7. Learned senior counsel for respondent No.2 has handed over duly translated copies of statements of DW-1, PW-1 as well as the power of attorney Ex.P1 which are taken on record. While referring to the statement of PW-1 Naval it has been highlighted that the father of said Nawal, who is Ami Lal-plaintiff, had come to the Court but being of old age and having problem regarding eye sight and hearing, had executed power of attorney (Ex.P1) and the said facts have also been mentioned in the power of attorney (Ex.P1). It is submitted that it is on account of the above said facts that the plaintiff could not himself appear and no adverse inference should be drawn against the plaintiff for the said purpose and at any rate, the said PW1, was aware of the case and had given evidence in conformity with the pleadings of the plaintiff.

8. Learned senior counsel for the respondent has relied upon the judgment of a Coordinate Bench of this Court in ***Bhupinder Nath (died) through LRs and another vs. Surasti (died) through LRs*** reported as



2005(2) RCR (Civil) 335; judgment of Himachal Pradesh High Court in **State of Himachal Pradesh vs. Khazana Ram** reported as **1999(3) CivCC 27** as well as judgment of the Hon'ble Supreme Court in **Muddas Ani Venkata Narsaiah (dead) through legal representatives vs. Mudda Ani Sarojana** reported as **(2016) 12 Supreme Court Cases 288** in support of his arguments.

9. Learned Senior Counsel for respondent No.2 as well as counsel for the respondents have submitted that the present appeal should be disposed of as having been compromised in terms of Order 23 Rule 3 CPC and for the said purpose, has referred to the order dated 01.08.2011 passed by the Coordinate Bench of this Court, vide which the Coordinate Bench of this Court after taking into consideration the fact that the sale had been made in favour of respondent No.2 during the pendency of the appeal in violation of the interim order dated 06.02.1986, had issued show cause notice to respondent No.1 to tender an explanation with respect to the violation of the order dated 06.02.1986 and in pursuance of the same, an affidavit dated 02.05.2012 was filed by Om Parkash legal representative of plaintiff (respondent No.1). The averments in the said affidavit have been highlighted to show that it was stated by the said Om Parkash that mutation No.1080 of Village Nathu Pur was entered on the basis of decree dated 03.10.1987 passed by the trial Court and thereafter, the application was moved by Lekh Ram that the present appeal was pending before the Hon'ble High Court and the said mutation case be not sanctioned and thereafter Lekh Ram-appellant No.1 had entered into a compromise and the said Lekh Ram had made a statement before the Assistant Collector, Ist



Grade, Gurugram on 08.07.1989 that he had compromised the matter with Om Parkash and they had no objection in case the mutation No.1080 was sanctioned in favour of Om Parkash. Further reference has also been made to mutation dated 26.09.1989 (Annexure A-1) as per which it has been observed by the Assistant Collector Ist Grade that the applicant-appellant Lekh Ram appeared and made statement that he and respondent-Om Parkash had compromised the matter and they had no objection in case mutation No.1080 was sanctioned and hence mutation No.1080 was sanctioned in favour of Om Parkash.

REBUTTAL ARGUMENTS:-

10. Learned Senior Counsel for the appellants in rebuttal has submitted that neither any application has been filed on behalf of respondent Nos.1 and 2 in terms of Order 23 Rule 3 nor any compromise deed has been placed on record. It is submitted that even with respect to mutation proceedings which are sought to be relied upon by the respondents, neither the statement of any of the appellants nor any compromise deed even in the said mutation proceedings have been brought on record to even remotely show that the matter was compromised. It is further submitted that none of the appellants had compromised the matter and even as per the best case of the respondents, in the mutation order, it has been recorded that Lekh Ram-appellant No.1 had given a statement. It is submitted that it is not even the case of the respondents that other appellants who are also necessary parties had made statement in favour of respondent No.1. It is argued that in case any such compromise had taken place, the party would have immediately moved an application in the present appeal



and would have got the same disposed of in terms of the compromise, more so, when there was an interim order operating in the present appeal. It is further submitted that in case any application under Order 23 Rule 3 had been filed by the respondents then an appropriate reply would have been filed by the appellants and it would have been explained that no such compromise had taken place. It is argued that the orders and documents that are being referred to by respondent Nos.1 and 2 are with respect to Suo Motu contempt proceedings which had been initiated by the Court on 01.08.2011 against the respondent No.1 after having learnt the fact that respondent No.1 had transferred the property in violation of interim order dated 06.02.1986 in favour of respondent No.2. It is submitted that even the mutation order is illegal and has been passed during the pendency of the appeal and the same cannot in any way be considered relevant for the purpose of deciding the present appeal.

11. Learned Senior Counsel has submitted that the mutation order dated 26.09.1989 is absolutely illegal on the face of it and same has been passed only to give unfair advantage to the respondents inasmuch as there is no statement of Lekh Ram which has been recorded nor any date of the said statement having been recorded has been mentioned in the same. It is stated that in the said order, it has also been mentioned that the order of the High Court need not be seen and thus, the Assistant Collector Ist Grade has sanctioned the mutation without even taking into consideration the proceedings before the High Court as well as the fact that there are several appellants who are contesting the case in the High Court. It is submitted that in the present case, the suit was filed by Ami Lal on 05.08.1981 and the



present Regular Second Appeal was filed in the year 1985 and an interim order was passed in the same on 06.02.1986 and it is thereafter that respondent No.1-Ami Lal suffered a consent decree dated 03.10.1987 in favour of his grandson Om Parkash to circumvent the order dated 06.02.1986 and the said conduct also does not entitle the respondents to any consideration on equity.

FINDINGS OF THE COURT:-

12. This Court has heard learned Senior Counsel for the appellants and added respondent No.2 as well as counsel for respondent No.1 and has perused the paper book and is of the opinion that the present Regular Second Appeal is meritorious and the impugned judgments of both the Courts suffer from material illegality, perversity and have been passed in violation of settled law and thus, the said judgments deserve to be set aside and the suit filed by the plaintiff for declaration of ownership on the basis of adverse possession, deserves to be dismissed, for the reasons detailed hereinafter.

13. It is the case of the plaintiff (respondent No.1 herein) that the defendants (appellants herein) are recorded as owners of the suit land and prior to them, the predecessor-in-interest of the defendants i.e. Ram Chand, who was father of defendant Nos.1 to 5 and grandfather of defendant Nos.6 to 8, was the owner. The plaintiff as stated hereinabove is claiming the ownership of the land in question on the plea of adverse possession.

14. With respect to the plea of adverse possession, the Hon'ble Supreme Court in one of its latest judgments dated 18.03.2024 in the case of ***M.Radheshyamlal*** (Supra) had placed reliance on the judgment of the



Hon'ble Supreme Court in **Karnataka Board of Wakf Vs. Government of India** reported as **(2004) 10 SCC 779**, in which, it was observed that for proving adverse possession, a party which takes the said plea has to show that his possession had started with a wrongful disposition of the rightful owner and thereafter the unlawful possession is actually visible, exclusive, hostile and continues over the statutory period and thus, for a person to claim ownership on the basis of adverse possession, he is required to show (I) as to on what date, he came into possession (ii) what was the nature of his possession (iii) whether the possession is open or undisturbed, (iv) whether the factum of possession was known to the other party or not, (v) how long his possession has continued. It was further observed that the person pleading adverse possession has no equities in his favour, since he is trying to defeat the rights of the true owner and, therefore, the plaintiff is required to clearly plead and establish all facts necessary to establish his adverse possession. Reference in the judgment of ***M.Radheshyamlal*** (Supra), has also been made to the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of **M. Siddiq (Ram Janmabhumi Temple-5 J.) Vs. Suresh Das** reported as **(2020) 1 SCC 1**, in which it was observed that the plea of adverse possession is not to be readily accepted, unless a clear and cogent basis has been made out in the pleadings and thereafter established in the evidence. It was further observed that evidence can only be adduced with reference to the matters which have been pleaded in the civil suit and in the absence of adequate pleadings, evidence by itself cannot supply the deficiency of a pleaded case. Relying upon the said judgment and other judgments, the Hon'ble Supreme Court in the abovesaid



case of ***M.Radheshyamlal*** (Supra) had observed that since, the plea of adverse possession is based on continuous, wrongful possession for a period of more than 12 years thus, the facts constituting the ingredients of adverse possession must be pleaded and proved by the plaintiff. Relevant portion of the said judgment is reproduced hereinbelow:-

*“10. As far as the plea of adverse possession is concerned, a **Constitution Bench** of this Court in the case of **M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das**, in paragraph 1142 and 1143 has held thus:*

"1142. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Evidently, therefore, the plaintiffs in Suit No. 4 ought to be cognizant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established.

1143. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous possession which meets the requirement of being nec vi nec claim and nec precario. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly



established first by adequate pleadings and second by leading sufficient evidence. Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case. Reading Para 11(a), it becomes evident that beyond stating that the Muslims have been in long, exclusive and continuous possession beginning from the time when the Mosque was built and until it was desecrated, no factual basis has been furnished. This is not merely a matter of details or evidence. A plea of adverse possession seeks to defeat the rights of the true owner and the law is not readily accepting of such a case unless a clear and cogent basis has been made out in the pleadings and established in the evidence."

(underline supplied)

11. In the case of **Karnataka Board of Wakf v. Govt. of India**, in paragraph 11, this Court has laid down the law regarding the plea of adverse possession. Paragraph 11 reads thus:

"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be 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. (See S.M. Karim v. Bibi Sakina [AIR



*1964 SC 1254] , Parsinni v. Sukhi [(1993) 4 SCC 375] and D.N. Venkatarayappa v. State of Karnataka [(1997) 7 SCC 567] .) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. **Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma [(1996) 8 SCC 128.]"***

(underline supplied)

12. Therefore, to prove the plea of adverse possession:-

- (a) The plaintiff must plead and prove that he was claiming possession adverse to the true owner;**
- (b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner;**
- (c) The plaintiff must also plead and establish when he came into possession; and**
- (d) The plaintiff must establish that his possession was open and undisturbed.**

13. It is a settled law that by pleading adverse possession, a party seeks to defeat the rights of the true owner, and therefore, there is no equity in his favour. After all, the plea is based on continuous wrongful possession for a period of more than 12 years. Therefore, the facts constituting the



ingredients of adverse possession must be pleaded and proved by the plaintiff.”

15. The present suit was filed on 05.08.1981 and thus, as per settled law, the plaintiff was required to plead and prove that he was in hostile, open, continuous and undisturbed possession of the suit land to the knowledge of the true owner for at least last 12 years i.e. since at least 04.08.1969, in addition to other aspects, in order to substantiate his claim of adverse possession. The plaintiff had produced on record the jamabandi for various years in order to meet the first requirement of being in possession for more than 12 years before the date of filing of the suit. A perusal of the jamabandi for the year 1970-71 Ex.P5 would show that one Chunna and not the plaintiff is shown in possession of the suit land and the ownership of the suit land is shown to be that of Ram Chand who is the predecessor-in-interest of the present appellants. Even in the jamabandi for the year 1965-66 Ex.P4, the said Chunna and not the plaintiff is shown to be in possession and the same is the position in the jamabandi for the year 1961-62 Ex.P3. Thus, even the documents i.e. jamabandies, to which presumption of truth is attached under Section 44 of the Punjab Land Revenue Act, 1887 (which provision is also applicable to State of Haryana) being record of rights, produced by the plaintiff himself demolish the case of the plaintiff that he is in possession of the suit land, much less hostile possession, since 1969, although, it is the case of the plaintiff in the plaint that he is in possession for the last 25 years. Once, the revenue record relied upon by the plaintiff himself, shows that the plaintiff was not in possession of the suit land for the last at least 12 years prior to the filing of the suit, then the suit of the



plaintiff deserved to be dismissed on the said ground alone. The plea sought to be raised on behalf of plaintiff/respondent No.1 to the effect that there seems to be some error in the said three jamabandies as in the subsequent jamabandi for the year 1980-81, the name of the plaintiff does appear, cannot be accepted. In this regard, it would be relevant to note that apart from the fact that the said documents have been produced by the plaintiff themselves and there is presumption of truth attached to the same, no averments have been made in the plaint to even remotely clarify or state as to who is the said Chunna and as to the fact that the said entries have been made on account of some mistake.

16. The plaintiff has himself not appeared in the witness box and his attorney Naval Singh had appeared in the witness box as PW1 and in his cross-examination, he has specifically stated that he never filed any application before the Tehsildar for change of entries of the jamabandi. The true translation and relevant portion of the said evidence (which has been translated by the office of learned Senior Counsel for respondent No.2 and has been handed over to this Court during the course of arguments) is reproduced hereinbelow:-

“We never filed any application before the Tehsildar for changing entries of Jamabandi.”

17. Moreover, no suit has been filed to challenge the said entries and even in the present suit, there is no prayer for declaring the said entries to be wrong and rather reliance has been placed on the said entries.

18. The trial Court has considered the said arguments on behalf of the defendants and has rejected the same in the most perverse manner.



Relevant portion of the judgment of the trial Court dealing with the said arguments is reproduced hereinbelow:-

“Learned counsel for the defendants has drawn my attention towards the revenue record on the file and alleged that the name of Jia Ram is not entered regularly in the revenue record and he was not remained in occupation of the same continuously since 1966-67 to 1970-71. The name of Chuna son of Ishri has been entered. According to his version, the plaintiff has not obtained the right of adverse possession. But I am not satisfied with this contention raised, reason being that there is no such plea to the written statement of the defendants regarding the alleged entries. However, it is also admitted fact of the parties that Jia Ram was the son of Jehri and Ami Lal plaintiff is the son of Jia Ram. The same aspect is clearly showing in Fard jamabandi for the year 1981-82. There is no such plea on behalf of the defendants that there was one another son of Jehri, whose name was Chunna. The possibilities cannot be ruled out that at the time of making the entries the name of Chunna has been entered. In fact, he was the son of Jia Ram and, therefore, this entry will not affect the right of the plaintiff.”

19. The Appellate Court while considering the said aspect in para 10 of the judgment has admitted the fact that the name of Chunna is appearing in the said jamabandies but had observed that “it appears to be a case of misreading of the name of Jia by the revenue officials”.

20. The abovesaid observations of the trial Court as well as Appellate Court are absolutely illegal and perverse and deserve to be set aside. The Courts have proceeded as if the onus was on the defendants to prove that the plaintiff is not in adverse possession. The observation to the



effect that there was no plea in the written statement regarding the alleged entries shows that the onus has been wrongly placed upon the defendants. Once, the said jamabandies were produced by the plaintiff themselves and there was no explanation given by the plaintiff in the plaint with respect to the name of Chunna having been mentioned in the possession column of the abovesaid three jamabandies, the question of defendants giving any clarification in their pleadings does not arise. Moreover, as has been stated hereinabove, presumption of truth is attached to the entries in the jamabandi and thus, on the basis of the same, the suit of the plaintiff should have been dismissed. Learned trial Court has further observed that the possibility cannot be ruled out that at the time of making the entry, the name of Chunna has been entered and thus, the same would not affect the right of the plaintiff. The Court was oblivious of the fact that it is the defendants who are the owners of the property and it is the plaintiff who has to plead and prove the plea of adverse possession to the hilt. The trial Court and the 1st Appellate Court have decreed the suit of the plaintiff on assumptions and presumptions and the observations made are completely perverse and against the law laid down by the Hon'ble Supreme Court in the abovesaid judgments.

21. The Hon'ble Supreme Court in the case of **“Prataprai N. Kothari Vs. John Braganza”**, reported as **(1999) 4 Supreme Court Cases 403** was pleased to observe as under:-

“10. Reliance was sought to be placed on the additional evidence admitted by the learned Single Judge during the pendency of the appeals to prove that the appellant had title to



the property. It is settled law that in the absence of any plea, no evidence is admissible. The Single Judge of the High Court overlooked that when there was no plea or issue on the question of title, no evidence whatever was admissible regarding the same. He acted beyond his jurisdiction in permitting additional evidence to be filed in appeals.”

22. In the present case, since there is no plea in the plaint explaining the entry with respect to Chunna in the abovesaid jamabandies thus, no evidence on the said aspect is admissible.

23. Case set up in the plaint by the plaintiff for the purpose of claiming ownership on account of adverse possession is that the plaintiff had been in possession of the suit land for the last more than 25 years and that the consolidation proceedings had taken place in Village Nathu Pur more than 25 years ago and before the said date, the plaintiff was in possession of the suit land as owner and thereafter in repartition, the land in question was allotted in favour of Ram Chand son of Dhanna who was predecessor-in-interest of the present appellants and that Jia, father of the plaintiff was in possession of the suit land and he had refused to hand over the possession of the suit land to the said Ram Chand and continued to remain in possession thereof and after the death of Jia, the plaintiff has remained in possession to the knowledge of the defendants who are successors in interest of Ram Chand and thus, his adverse possession is established. Paras 2, 2(a), 2(b) and 4 of the plaint are reproduced hereinbelow:-

“2. That in the copy of the said jamabandi the defendants are recorded as owners of the said land. That the said entry



*favouring the defts is incorrect. That for grounds stated below the plff has become owner by adverse possession extending over 25 years of the suit land and **the corresponding ownership rights of the defts in respect thereof have become extinguished:-***

(a) That proceedings for consolidation of holding or Blockbandi took place in village Nathupur more than 25 years ago. That before the said proceedings the plaintiff was inpossession of the suit land as owner thereof. That in-repartition in the course of the said proceeding the land in suit was allotted in favour of Ram Chand s/o Dhanna, father of defts Nos.1 to 5 and grand father of defts Nos.6 to 8. That Jia Ram father of the plaintiff was in possession of the suit land at that time. That he not only refused to handover possession of the suit land to the said Ram Chand but continued to remain in possession thereof adversely under assertion of ownership title as bila lagan bawaja purana Qabza to the knowledge of the said Ram Chand and after his death to the knowledge of the defts. That after the death of his father the plaintiff has remained in possession of the suit land and has at all material times claimed to be owner of the suit land has denied the title of the defts in respect thereof.

(b) That by their acts and conduct the defts are estopped from denying that the plff has become owner of the suit land by adverse possession.

4. That Ram Chand s/o Dhanna recorded in the jamabandi for the year 1975-76 has died and that the mutation of succession has been attested in favour of the defts who are impleaded in the suit as defts.”

24. It is not in dispute that in the present case, there is nothing on record to even remotely show that the plaintiff or his father was in possession of the suit land as owner prior to consolidation proceedings.



Even the year in which the consolidation proceedings had taken place had not been specifically mentioned in the plaint nor the date of allotment in favour of Ram Chand has been mentioned. It is also not in dispute that no allotment order or any proceedings relatable to the said consolidation proceedings have been produced by the plaintiff to even remotely substantiate the said pleas. In the plaint, no date/year or even approximate time of alleged refusal by the father of the plaintiff to the predecessor-in-interest of the defendants to handover the possession of the suit land has been given nor any evidence regarding the same has been produced. As has been stated hereinabove, the plaintiff did not appear before the trial Court and gave power of attorney to Naval Singh PW1 on 06.06.1983, the date on which the attorney was examined and the said PW1 in his cross-examination has stated that he was not aware as to whether Ram Chand defendant was made an owner of the land in dispute at the time of consolidation. The true translation of the relevant portion of the said evidence of PW1 is reproduced as under:-

“.....I am not aware as to whether Ram Chander, defendant in this case, was put as owner of land in dispute at the time of consolidation period or not.....”

25. The trial Court, however, by taking the averments in the plaint to be gospel truth held the said aspect in favour of the plaintiff. Relevant portion of the judgment of the trial Court dealing with the said aspect is reproduced hereinbelow:-

“.....The cited authority is P. L. R. 1983, page 429, Johbin vs. Angad. Defendants will not get the benefit of this authority and the same is not applicable in this case as the facts of the



present case are not similar to the facts of the cited case because in this case before partition, father of the present plaintiff was owner in possession of the suit land. Thereafter, consolidation of holdings took place in the village and the alleged land was allotted to the deceased Ram Chand, who was father of the defendants No. 2 to 5 and grand father of defendants No. 5 to 8 and that Jia Ram had not handed over the possession of the suit land to the allottee and remained in possession of the same without any interruption therein....”

26. Even the Appellate Court on surmises and conjectures and without there being any material much less document to support the said plea, accepted the said plea of the plaintiff and rejected the arguments of the present appellants. Para 14 of the said judgment of the Appellate Court where the said aspect is dealt with is reproduced hereinbelow:-

*“14. During the course of arguments, the learned counsel for the appellants also relied upon the observations made in AIR 1983 Punjab and Haryana 83- Inder Singh and others Vs. Ujagar Singh; and to the observations made in 1983 P.L.R. Joginder Pal Vs. Angad Singh and others, and in 1985 P.L.J.237-Karcha Singh Vs. Dewan Singh. In Inder Singh and others Vs. Ujagar Singh (Supra), it was held that from the admission of the plaintiff that the defendant was in possession of the suit land for more than 12 years, no inference of adverse possession could be drawn, while in the other two authorities Karcha Singh Vs. Dewan Singh and Joginder Bal Vs. Angad Singh and others, it was held that mere non-payment of rent does not warrant the finding that the possession of the defendant qua the plaintiff had become adverse. **In my opinion, none of these authorities is applicable to the facts of this case, because in our case, the plaintiff had claimed adverse possession on the ground that after consolidation***



proceedings were held, and after the suit property was allotted to Ram Chander, in re-partition proceedings, Jia Ram, who was in possession of the suit property, was not dispossessed, and that, possession of Jia Ram became adverse from the day, it was allotted to Ram Chander, in repartition proceedings. In view of distinguishable facts, none of the authorities cited by Sh.K.L.Dang, learned counsel for the appellants, is of any help of the appellants, while in the present case, the authority of 1981 Punjab Record 1911 is applicable on all fours.....”

27. Perversity and illegality in the observations made in the abovesaid judgments on the said aspect is manifold. The trial Court had observed that father of the present plaintiff was owner in possession of the suit land. It is not in dispute that there are no documents on record to even prima facie support the said finding. In the plaint in paragraph 2(a), it is the plea of the plaintiff that he was in possession of the suit land as owner thereof prior to the consolidation proceedings and thus, the said observation is even contrary to the pleadings in para 2(a) of the plaint and have been made without any basis. It would be relevant to note that in the written statement, the aspect that the plaintiff was in possession of the suit land prior to the said proceedings as owner was not admitted. At any rate, it was necessary for the Court while making such an observation to have made reference to some document or evidence. Even observations with respect to the consolidation proceedings having taken place and the land in question being allotted to Ram Chand and further the fact of Jia Ram not handing over the possession of the suit land to Ram Chand have been made without any basis. The 1st Appellate Court had further observed that from the date of



allotment to Ram Chand, the possession became adverse. As has been stated hereinabove, neither any date of allotment nor allotment order itself nor any document with respect to consolidation proceedings, has been stated/produced by the plaintiff, and even the plaintiff himself had not appeared in the witness box to give his oral evidence in support of the said averments and in fact his attorney Naval Singh who had appeared as PW1, had stated in his cross-examination (relevant portion of which has been reproduced hereinabove) that he was not aware of the fact that Ram Chand-defendant was put as owner of the land in dispute at the time of consolidation. Thus, the said observations of the 1st Appellate Court are also baseless. A heavy onus was on the plaintiff to prove the vague averments made by the plaintiff in the plaint but however the trial Court and the First Appellate Court have presumed the case of the plaintiff to be gospel truth without any basis and even though the stand of the plaintiff is even contrary to the jamabandies produced by the plaintiff himself.

28. Much emphasis has been laid on behalf of the respondents that with respect to certain aspects, the defendants had stated in their written statement that they were not having knowledge of the same but however, a careful perusal of the entire written statement of the defendants would show that it was specifically denied by the defendants that Jia Ram father of the plaintiff was in possession of the suit land at the time of consolidation and that there was any refusal by Jia Ram father of the plaintiff with respect to handing over the possession of the suit land to Ram Chand. Even the fact that after the death of father of the plaintiff, the plaintiff remained in possession of the suit land at all material times to claim ownership was also



denied. Relevant portion of para 2(a) of the written statement in the said regard is reproduced hereinbelow:-

“.....It is not admitted that Jia Ram alleged father of the plaintiff was in possession of the suit land at that time. It is totally incorrect to suggest that Ram Chander ever asked the said Jia Ram to hand over possession of the suit land from Jia Ram above said. The question of any refusal by Jia Ram does not arise.....

Xxx xxx xxx xxx

.....It is not admitted that after the death of the father of the plaintiff, he remained in possession of the suit land and has at all material times come to be owner of the suit land and denied the title of the defendants in respect thereof.....”

29. At any rate, since heavy onus was on the plaintiff to prove the plea of adverse possession, thus, it was for the plaintiff to plead and prove every fact with respect to adverse possession and since, adequate pleadings were also not there in the present case thus, merely on account of the fact that the defendants have denied the proceedings of consolidation of holdings and some other aspects for want of knowledge, the same would not call for decreeing the suit of the plaintiff. In fact, in para 1 of the written statement also, there is specific denial of the case set up by the plaintiff. Para 1 of the written statement is reproduced hereinbelow:-

“1. Not admitted. The plaintiff is not admitted to be in possession of the suit land as continuously cultivating it for more than 25 years openly, and under assertions of claim of ownership.”

30. The judgment of the Hon’ble Supreme Court cited on behalf of



the respondents in the case of ***Muddas Ani Venkata Narsaiah (dead) through legal representatives*** (Supra), would also not further the case of the plaintiff, inasmuch as, apart from the fact that in the present case on the material aspects, specific denial has been made by the defendants/present appellants in their written statement (which part of the written statement has been reproduced hereinabove) the facts of the abovesaid judgment are clearly distinguishable. In the said case, the plea raised by the plaintiff therein for claiming ownership was, apart from other aspects, based on a registered sale deed dated 25.04.1981. The defendants therein on the other hand had opposed the said plea by raising several issues, most important of which was that defendant No.3 therein was adopted by a person who as per the defendants therein was the owner of the property and in the said circumstances, had stated that they had no knowledge of the registered sale deed. The Hon'ble Supreme Court had in para 17 observed that once defendant No.3 was not able to establish her case that she was an adopted daughter of the person who as per her case was the owner, then she being third party could not have questioned the execution of the registered sale deed, more so, when there was no effective cross-examination made of the plaintiff witnesses with respect to the factum of execution of the said sale deed and even defendant No.3, therein had in her deposition not denied the fact that the sale deed was executed in favour of the plaintiff and that the said sale deed was not specifically denied in the written statement. There was no plea raised by the defendants therein that the said registered sale deed had not been produced on record. In the present case, the consolidation proceedings or order of allotment have not been produced on record and the



present case is a case where the plaintiff has set up a claim of adverse possession which is on a completely different footing than the case which has been set up by the plaintiff therein in the said case based on a registered sale deed dated 25.04.1981.

31. Further even a perusal of para 10 of the judgment of the trial Court would also show that the case of the plaintiff has been decreed by laying onus on the defendant. The First Appellate Court has also as detailed hereinabove, on the basis of surmises and conjectures, upheld the judgment of the trial Court. The judgment of the trial Court as well as the 1st Appellate Court has not taken into consideration material documents, evidence and is also against settled law and suffers from illegality and perversity..

32. It is also argued on behalf of the respondents that entry in column No.9 in the jamabandi for the year 1980-81 is “*bila lagan bawaja kabja purana*” and in column No.5 regarding cultivation the name of Ami Lal (plaintiff) has been mentioned in the said jamabandi and he is shown to be “gair marusi”. It is argued on behalf of the respondents that the said entries would mean that the plaintiff has been shown as tenant at Will who has not been paying rent on account of old possession and the said entries would show that possession of the plaintiff was adverse and thus, the suit of the plaintiff has been rightly decreed. In support of said arguments, as noticed above, reliance has been placed upon the judgment of Single Bench in ***Bhupinder Nath (Died) through L.Rs. and another (supra)*** and judgment of the Himachal Pradesh High Court in ***State of Himachal Pradesh vs. Khazana Ram (supra)***. On the other hand, learned senior counsel for the appellants has relied upon the judgment of the Single Bench



of this Court in *Sandeep and others vs. Fateh Singh and others* reported as **2017(1) PLJ 51**. Special Leave to Appeal (C) no.7250-7251/2017 filed against the said judgment has been dismissed by the Hon'ble Supreme Court vide order dated 13.04.2017.

33. This Court has considered the said argument and is of the opinion that the said argument does not further the case of the plaintiff in any manner. As has been stated hereinabove, the jamabandi for the years 1970-71 (Ex.P5), 1965-66 (Ex.P4) and 1961-62 (Ex.P3) do not even reflect the name of the plaintiff in the cultivation column so as to establish 12 years of continuous possession much less hostile, prior to the date of filing the suit. Moreover, the judgment of the learned Single Bench in the case of *Bhupinder Nath (Died) through LRs and others (supra)* was considering an entry in the revenue record which was “Billa Lagan **Ba Khial Malkiat**”. The learned Single Judge of this Court had observed that the said entry shows that the person in possession was not obliged to pay any rent because he considered himself as owner. There is a stark difference between the two entries inasmuch as, the entry in the cited judgment shows that the person, who had set up the case of adverse possession, had referred to the entries which showed that he had claimed himself to be the owner of the suit land. On the other hand, entries in the present case only show that there is long possession and it nowhere shows that the plaintiff had claimed himself to be the owner. It is a matter of settled law that mere long possession cannot be stated to be adverse possession unless the other necessary ingredients are proved which are not proved in the present case. It would be further relevant to note that in the case of *Bhupinder Nath (Died) through LRs and others*



(supra), relevant material to prove adverse possession had been produced on record including the consolidation proceedings, Khatauni Istemal (Ex.P3), Naksha Hakdarwar (Ex.P2) and jamabandis for the years 1935-36 (Ex.P9), 1939-40 (Ex.P16), 1943-44 (Ex.P17), 1952-53 (Ex.P18) and also the subsequent jamabandis and thus the continuity of possession was held to be established. Moreover, in the said judgment, reference was made to the judgment of the Division Bench of this Court in **Ram Lal and others Vs. Chetu @ Chet Ram and others**, reported as **AIR 1958 Punjab 335**, in which also it had been observed that adverse possession would commence with the wrongful dispossession of the rightful owner at some particular time and the same must commence in wrong and must be maintained against right and also must be actual, open, notorious, hostile, continuous, exclusive and should be maintained for the statutory period. Reference was also made to the judgment of **Annasaheb Babusaheb Patil and others Vs. Balwant alias Balasaheb Babusaheb Patila (Dead) by LRs and heirs etc.** reported as **AIR 1995 Supreme Court 895**, in which the Hon'ble Supreme Court had observed that limitation of 12 years would begin to run from the date the defendant's interest becomes adverse to the plaintiff and under Article 65, the burden of proving the said plea affirmatively was on the person who was raising the said plea and the plea of adverse possession must be shown by clear and unequivocal evidence that the possession was hostile to the real owner and amounted to a denial of his title to the property claimed. The said judgments were distinguished by the learned Single Judge in the case of **Bhupinder Nath (Died) through LRs and others (supra)** on account of the entry in the jamabandies produced in the said case but



however since the entry in the jamabandi in the present case is different from the entry in the abovesaid case thus, the law laid down in the abovesaid judgment of the Hon'ble Supreme Court and the Division Bench would also, in the facts and circumstances of the present case, go against the plaintiff. Thus, the cited judgment would not further the case of the plaintiff/respondent No.1.

34. Similarly in the case of *State of Himachal Pradesh vs. Khazana Ram (supra)*, the entry in column regarding 'Lagan' was recorded as "*Bila Lagan Bawaza Nazaiz Kabza*" and it was observed by the learned Single Judge that from the said entry, it was apparent that the possession of the respondent therein was unauthorized and in addition to other documents, there was a report Ex.PW1/A made by Revenue Patwari suggesting appropriate action as the possession of the respondent therein was found to be illegal and the same was unauthorized since 1959-60. In the present case as has been stated hereinabove, there is no mention of the word "Nazaiz" in the jamabandies produced by the plaintiff and thus, the said judgment also does not further the case of the plaintiff. In fact a closer perusal of the above said two judgments cited on behalf of the respondents would show that where a person is claiming himself to be owner by adverse possession and is in unauthorised occupation, the entries in the revenue record duly record the said fact as is apparent from the jamabandies produced in the abovesaid two cases. On the other hand, the jamabandies which have been produced by the plaintiff, do not reflect the fact that the plaintiff is claiming himself to be the owner or is shown to be in unauthorized occupation of the suit land which fact goes against the plaintiff.



35. On the other hand, in the judgment in the case of ***Sandeep and others (supra)***, it was observed by the Court that although the possession of the person claiming adverse possession was shown to be that of ‘*Bhaibandi* or *gair marusi*’ but in the revenue record, at no point of time it has been reflected as adverse (***Mukhalfana***) and thus, it was observed that the plaintiffs/appellants therein were not able to establish the ingredients of adverse possession. Relevant portion of the said judgment is reproduced hereinbelow:-

“27. In the alternative, appellants-plaintiffs have also claimed the title to the suit property on the basis of adverse possession. The adverse possession is a hostile possession by clearly asserting hostile title in denial to the title of the true owner. The said possession must be adequate in continuity, to the knowledge of the true owner and it must start with a wrongful disposition of the rightful owner. A person claiming adverse possession has to show on which date he came into possession, what was the nature of his possession, whether the factum of his possession was known to the true owner, how long his possession continued and whether his possession was open and undisturbed. It is further the settled principle of law that a person pleading adverse possession has no equities in his favour as he is trying to defeat the title of the true owner. Xxx xxx

28. Again in case Hemaji Waghaji Jat Versus Bhikhabhai Khengarbhai Harijan, 2008(4) RCR (Civil) 401, the Hon'ble Apex Court has laid down that law of adverse possession which cause an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. It was further laid down in this case that there must be evidence when the possession became adverse. So, that the



*starting point of limitation against the affected party can be ascertained. The Hon'ble Apex Court in case **P.T. Munichikkanna Reddy & Ors vs Revamma And Ors** 2007(2) R.C.R (Civil) 847 has laid down that mere possession for howsoever length of time does not result in converting the permissive possession into adverse.*

Xxx xxx

*29.xxx xxx. Even, in the revenue record, they have been shown to be in possession of the suit land in **Bhaibandi or Gair Marusi**. Their possession in the revenue record at no point of time has been reflected as adverse (Mukhalfana). Thus, appellants-plaintiffs have not been able to establish the ingredients of the adverse possession.”*

Even in the present case, the jamabandi does not mention the term ‘Mukhalfana’ (adverse).

36. The argument raised on behalf of the respondents that the matter has been compromised and the present appeal be disposed of in terms of Order 23 Rule 3 CPC is also completely misconceived. Before dealing with the said argument, it would be necessary to refer to Order 23 Rule 3 CPC which is reproduced hereinbelow:-

*“3. **Compromise of suit.**—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise **[in writing and signed by the parties]** or where the defendant satisfied the plaintiff in respect to the whole or any part of the subject-matter of the suit, **the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith** [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of*



the suit:]

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

[Explanation.— An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.]”

37. A perusal of the above provision would show that it has to be proved to the satisfaction of the Court that the suit has been adjusted wholly or in part by any lawful agreement or compromise which has to be in writing and signed by the parties or where the defendant has satisfied the plaintiff in respect of the whole or any part of the subject matter of the suit, then the Court has the power to order such agreement, compromise or satisfaction to be recorded and then pass a decree in accordance therewith. In the proviso, it has been stated that in case one party alleges and another party denies that there has been adjustment or satisfaction the Court would then decide the question. The explanation to the said provision provides that an agreement or compromise which is void or voidable under the Indian Contract Act shall not be deemed to be lawful within the meaning of this rule.

38. In the present case, it is not disputed that neither any agreement nor any compromise in writing much less signed by the parties has been produced on behalf of the respondents in the present appeal. Even an



application stating that a compromise has been effected after annexing the said compromise / agreement, with further averments that the present appellants are backing out or denying the same, has not been filed. No statement of the appellants has been shown to this Court to show that there was any compromise with respect to the suit property and thus, the question of this Court recording any agreement / compromise or satisfaction does not arise. Sole reliance has been placed on behalf of the respondents on a mutation produced during the course of *suo moto* show cause notice having been issued for contempt against respondent no.1. In order to appreciate the plea of the respondent the following facts are required to be considered and the said facts would show that even the conduct of respondent no.1 is questionable.

39. It is not in dispute that the present regular second appeal was filed in the year 1985. On 06.02.1986 while disposing of CM-3590-C-1985, a Coordinate Bench of this Court was pleased to pass the following order:-

***“After hearing the learned counsel for the parties, it is ordered that in case the respondent wants to sell the property in dispute during the pendency of this appeal, he would mention in the sale deed that he is the owner of the property by virtue of the decrees granted by the Courts in this litigation against which this appeal is pending in this Court. Without writing this in the sale deed, he would not be allowed to sell the property. In case there is violation it will be open to the other side to move this Court for appropriate orders.*”**

It was argued by Shri M.L.Sarin that this Court has no jurisdiction to pass the aforesaid order at the instance of the defendants and such an order could have been passed only if the plaintiff was asking for such a relief. I do not find any merit



whatsoever in this argument. This Court has jurisdiction to pass appropriate interim orders according to the facts of the case. Here the plaintiff, who is respondent in this appeal, is wanting to sell the property as owner on the basis of the declaration granted to him by the two Courts below. To avoid any multiplicity of proceedings and to safeguard the interest of the defendant- appellants, the aforesaid order has been deemed necessary which in no way affects the rights of the plaintiff if ultimately he is to succeed in the appeal, but if he is to fail, then the rights of the defendant-appellants would certainly be affected by the sale.

This application stands disposed of accordingly.

February 6, 1986.”

A perusal of the above order would show that it was observed that in case the respondent wanted to sell the property in dispute during the pendency of the appeal, then he would have to mention in the sale deed that he became owner of the property by virtue of decrees passed by the trial Court and the 1st appellate Court and the present appeal was pending and without writing the said aspect in the sale deed, he would not be allowed to sell the property.

40. CM-685-C-1989 was filed by the applicant Om Parkash, grand son of Ami Lal (plaintiff) for striking off the name of Ami Lal plaintiff from the array of the parties and to mention the name of Om Parkash instead. The plea taken in the said application was that the said Om Parkash had filed a civil suit no.953 of 1987 against his grand father for declaration and the said suit was decreed vide judgment and decree dated 03.10.1987 and since he has become owner by virtue of the said decree and subsequently Ami Lal had died, thus, he be impleaded. It would be relevant to note that although



in the application, civil suit No.953 is stated to be of the year 1983, but a copy of the decree sheet has been annexed as Annexure A-1 along with the said application and the perusal of the said decree sheet (Annexure A-1) would show that the said civil suit No.953 is of the year 1987 and was presented on 29.09.1987 and was decreed on 03.10.1987 and thus, was apparently collusive. The fact that civil suit is of the year 1987 has also been fairly stated by learned counsel for respondent No.1. The said application was allowed subject to just exceptions. From the reading of the above application moved, it appears that in order to overcome the order dated 06.02.1986, respondent no.1 had suffered decree in favour of his grand son. Thereafter, CM-4173-C-2011 was filed by respondent no.2- Dr.Vanit Nalwa and her mother on the plea that the said Om Parkash, grand son of the plaintiff, had sold 12 biswas of suit land to Dr.Amarjit Singh Nalwa, predecessor of applicant vide sale deed dated 17.11.1989 and Karan Singh, who had also purchased part of suit land from Om Parkash, had also sold a portion of said land measuring 4 biswas on 15.05.1998 to the applicant and the said Dr.Amarjit Singh Nalwa had left registered Will in favour of both the applicants. It is not in dispute that in both the said sale deeds, no reference with respect to pendency of appeal was mentioned. Thus, after having got a decree in his favour, Om Parkash had further sold the property.

41. On 01.08.2011, a Coordinate Bench of this Court noticing the fact that the sale deeds are executed with respect to the said suit land, issued show cause notice to respondent no.1 with respect to the violation of the order dated 06.02.1986. The relevant portion of the said order dated



01.08.2011 passed by a Coordinate Bench of this Court is reproduced hereinbelow:-

“Now C.M.No.4174-C of 2011 has been moved by Avneet Kaur daughter of Shri Jaspal Singh resident of S-39, Green Park Extension, New Delhi, and C.M.No.4173-C of 2011 has been moved by Dr.Mrs.Amarjit Singh wife of Lt.Dr.Amarjit Singh and Dr. Vanit Nalwa daughter of late Dr.Amarjit Singh residents of House No.S-64, Panchseel Park, New Delhi, for impleadment on the ground that during the pendency of the appeal they have purchased the suit property from respondent Ami Lal. Along with these applications sale deeds in favour of the applicants have also been produced on record. However, a perusal of the aforesaid sale deeds would show that there is no mention of the fact of litigation, as directed by this Court vide order dated 6.2.1986.

Let a show cause notice be issued to respondent No.1 for 7.9.2011 to explain as to why there is a violation of the order dated 6.2.1986.

August 11, 2011”

42. It was in the said proceedings that Om Parkash had made a reference to the mutation order dated 26.09.1989 to show that some compromise had taken place with one of the appellants i.e., appellant no.1- Lekh Ram. For the purpose of present plea, strong reliance has been placed upon the mutation order dated 26.09.1989 (P1) passed by the Assistant Collector Ist Grade, by the respondents, which is although not an exhibited document but is a part of the record of the present appeal. The said order cannot possibly be made the basis for disposing of the present appeal under Order 23 Rule 3 CPC on the basis of compromise for the following reasons:-



- i) No compromise or statement of any of the appellants even in the mutation proceedings has been produced.
- ii) Even if the said order is taken on face value, although not exhibited, then also at best some alleged compromise with appellant no.1-Lekh Ram is recorded but there is no reference to any compromise with all the other appellants. Even the statement/compromise with Lekh Ram is not annexed.
- (iii) Reference in the order is made to mutation no.1080 which is entered on the basis of decree dated 03.10.1987 which was suffered by the plaintiff Ami Lal in favour of his grand son Om Parkash in order to circumvent the order dated 06.02.1986 passed by the Coordinate Bench of this Court while granting interim protection to the plaintiff (which order has been reproduced hereinabove). In the said mutation order, factum of an appeal pending in the High Court has been noticed and the Assistant Collector Ist Grade has, without considering as to who are the parties in the appeal, solely on the basis of an alleged statement of Lekh Ram, sanctioned the mutation and has stated that there is no need to refer to the order of the High Court.
- (iv) Learned counsel for the appellant has submitted that there is no such statement made by any of the appellant including the said Lekh Ram and has thus, disputed the observations made in the said document even with respect to Lekh Ram.
- (v) Moreover, if any compromise had taken place between the parties, at the time of entering of the mutation in the year 1989, then the parties would have immediately moved an application for disposing of the



present appeal in terms of the said compromise and would not have left the present appeal pending more so when there was an interim order operating against the respondent No.1 in the same.

43. This Court is surprised that even without considering the fact that there was an interim order passed by this Court and that there were several other appellants, the Assistant Collector Ist Grade relying on the alleged statement of one of the appellants and above said Om Prakash has sanctioned the mutation on the basis of decree dated 03.10.1987, which apart from apparently being collusive, was passed during the pendency of the present appeal and was to circumvent the order passed by the Coordinate Bench of this Court dated 06.02.1986. The Coordinate Bench of this Court vide order dated 28.09.2016 had disposed of the contempt petition by observing that in case the appellant-plaintiff succeeds in the case, the sale deeds, since have been made during the pendency of the lis, would automatically be null and void in the eyes of law. Thus, reference to the said proceedings including the mutation order only reflects at the unfair conduct of the respondent No.1 and cannot be made the basis of disposing of the present appeal in terms of Order 23 Rule 3 CPC.

44. It would be relevant to note that the present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 of CPC and in paragraph 27 of the judgment of the Constitutional Bench (Five Judges Bench) of the Hon'ble Supreme Court in the case of **Pankajakshi (dead) through legal representatives and others Vs. Chandrika and others and other connected matters** reported as **(2016) 6 Supreme Court Cases 157**, it was observed that Section 97(1) of the Code

of Civil Procedure (Amendment) Act, 1976, has no application to Section 41 of the Punjab Courts Act, which provision would necessarily continue as a law in force. Section 41 of the Punjab Courts Act provides that an appeal would lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the grounds mentioned therein and one such ground i.e. ground No.(a) is the decision being contrary to law or to some custom or usage having the force of law.

45. Keeping in view the abovesaid facts and circumstances of the case, this Court is of the opinion that the trial Court and the First Appellate Court have misread and misconstrued the evidence and the material documents, resulting in a perverse finding and the impugned judgments are illegal, against settled law and are based on presumptions and assumptions and would thus, make out a case for interference by this Court under the abovesaid provisions. Accordingly, the present regular second appeal is allowed and the judgments of the trial Court dated 19.04.1984 and the 1st appellate Court dated 11.10.1985 are set aside and the suit of the plaintiff is dismissed with no order as to costs.

46. Pending application, if any, stands disposed of in view of the above said order.

19.07.2024

Pawan/Davinder

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No