



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

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RSA-1770-1987 (O&M)
Date of Decision : 27.05.2024

NATIONAL INSTITUTE OF SPORTS

.... Appellant

VERSUS

NIRANJAN DASS AND OTHERS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Mayank Mathur, Advocate for the appellant.

Mr. Sanjiv Gupta, Advocate for respondents No.1 and 2.

Mr. Jasjit Singh, DAG Punjab for respondent No.3.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the National Institute of Sports impugning the judgement and decree dated 30.09.1985 passed by the Trial Court and the judgment and decree dated 27.11.1986 passed by the First Appellate Court.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondents No.1 and 2 herein filed a suit for declaration to the effect that they were the owners in possession in equal shares of a plot of land comprised in Khasra No.566-min and No.567-min measuring 6 Bighas and 2 Biswas situated in the revenue Estate of Patiala, Tehsil and District Patiala as fully described in the plaint. It is to be noted that a similar suit was also filed by the other occupants of the area popularly known as '*Daru Kutian Basti*'. Plaintiff-respondents No.1 and 2 filed the suit averring in the plaint that they were the owners in possession of the suit land and that the land had

been gifted orally by the Maharaja of erstwhile State of Patiala to their forefathers for the purposes of raising residential houses prior to the year 1948 and ever since the plaintiff-respondents No.1 and 2 had been in continuous, hostile and adverse possession of the same without payment of any rent to anybody whatsoever and thus had become owners of the property in question. It was further averred that they had made valuable improvements and raised construction on the said land. It was further averred that it had recently come to their notice that in the revenue records respondent No.3-State of Punjab was being reflected as the owner and that they approached the Halka Patwari for getting copies of the jamabandi and hence the present suit which was filed against the State of Punjab. State of Punjab filed a reply raising various preliminary objections including those of cause of action and maintainability. On merits the ownership of the plaintiff-respondents No.1 and 2 was denied and it was averred that the suit land continued to vest in the State. The factum that the land had been gifted by the Maharaja of erstwhile State of Patiala to the plaintiff-respondents No.1 and 2 was also denied. It was further averred that any construction raised was illegal and that the possession of plaintiff-respondents No.1 and 2 was not open and hostile. Replication was filed reiterating the contents of the plaint and denying those of the written statement.

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

- 1) Whether the plaintiffs are entitled to the declaration sought for, on the basis of the allegations made in the plaint ? OPP
- 2) Whether the plaintiffs are in possession of the suit property and have raised construction on it worth more than rupees one lack, if so its effect ? OPP
- 3) Whether the plaintiffs have no cause of action ? OPD
- 4) Whether suit is not maintainable in the present form ? OPD
- 5) Whether the suit is time barred ? OPD
- 6) Whether the notice sent under Section 80 C.P.C. is illegal ? OPD
- 7) Relief.

4. The Trial Court vide judgment and decree dated 30.09.1985 decided issues No.1 and 2 in favour of the plaintiff-respondents No.1 and 2. Issue No.3 was decided against respondent No.3-State of Punjab. On issue No.4 no argument was raised and hence the same was decided against respondent No.3-State of Punjab. Issue No.5 was decided in favour of plaintiff-respondents No.1 and 2. Issue No.6 was also decided against respondent No.3-State of Punjab. Accordingly, the suit of the plaintiff-respondents No.1 and 2 was decreed to the effect that the plaintiff-respondents No.1 and 2 have become owners by efflux of time in equal shares of the land comprised in Khasra No.566-min and No.567-min

measuring 6 Bighas 2 Biswas situated in the revenue Estate of Patiala, Tehsil and District Patiala.

5. During the pendency of the suit before the Trial Court, an application was filed under Order I Rule 10 CPC by the present appellant for being impleaded as a party on the basis of an agreement to sell dated 02.05.1961. The said application was dismissed vide order dated 05.05.1985. The said order dated 05.05.1985 was challenged before this Court in CR-2266-1985. During the pendency of the said revision petition the suit itself was decreed by the Trial Court vide judgment and decree dated 30.09.1985. Vide order dated 10.12.1985 the revision petition being CR-2266-1985 was dismissed as having been rendered infructuous and the appellant herein was given liberty to agitate the point in appeal, if otherwise entitled to do so in law. The appellant herein as well as respondent No.3-State of Punjab preferred separate appeals before the First Appellate Court which were dismissed vide judgment and decree dated 27.11.1986. Meanwhile, some of the other occupants preferred Civil Suit No.320-T dated 19.12.1990 which was decided vide judgment and decree dated 23.11.1998 on identical grounds. The said judgment and decree was challenged in appeal by the State of Punjab which was dismissed. Aggrieved by the same, regular second appeals were preferred - one by the respondent No.3-State of Punjab and another by Union of India - being RSA-3246-2002 and RSA-3531-2002 respectively which came to be dismissed vide order dated 28.09.2007 passed by this Court. The said order dated 28.09.2007 passed in RSA-3246-2002 titled as State of Punjab V/s Gurcharan Singh and Others and RSA-3531-

2002 titled as Union of India V/s Gurcharan Singh and Others attained finality inasmuch as admittedly no Special Leave Petition (SLP) was preferred by respondent No.3-State of Punjab or the appellant herein/Union of India.

6. During the pendency of the present appeal, this Court on 15.05.2024 passed the following order :

“Learned counsel for respondent Nos.1 and 2 has pointed that the area involved in the present case was known as Daru Kutian and that the land was gifted to their forefathers by the late Maharaja of erstwhile State of Patiala. It has further been pointed out that some of the inhabitants of the same Basti had filed separate suits qua which RSA Nos.3246 and 3531 of 2002 were preferred by the Union of India in this Court. Both the said appeals were disposed off by a common order dated 28.09.2007 holding that the inhabitants of the Basti were owners of the suit property. The learned counsel has further pointed out that judgment dated 28.09.2007 passed by this Court has since attained finality inasmuch as the same was not challenged by the Union of India or State of Punjab. The learned counsel for respondent Nos.1 and 2 has further pointed out that even in the alleged sale deed which was executed in favour of the appellant herein, Khasra Nos.566 min and

567 min were excluded as they were stated to be in unauthorized possession.

On a pointed query by this Court as to whether the land involved in RSA Nos.3246 and 3531 of 2002 was also part of the alleged agreement to sell by the State of Punjab in their favour, the learned counsel for the appellant states that he is not in a position to answer the said query as the same needs to be verified.

List on 24.05.2024.

Meanwhile let an affidavit be filed by the appellant stating therein as to whether the land involved in RSA Nos.3246 and 3531 of 2002 was also part of the agreement to sell between the appellant and the State of Punjab since neither the agreement to sell nor any other title document was ever produced by the appellant before the First Appellate Court.”

Subsequent to the passing of the aforesaid order, an affidavit has been filed, however, the query raised by the Court was not answered. Today, another affidavit of Mr. Vineet Kumar, Executive Director(A), SAI NS NIS, Patiala has been filed wherein it has categorically been admitted and affirmed that the suit land involved in RSA-3246-2002 and RSA-3531-2002 forms part of the sale deed dated 23.03.1988 (inadvertently mentioned as 03.03.1988 in the affidavit) executed by respondent No.3-State of Punjab in favour of National Institute of Sports.

7. This Court in RSA-3531-2002 and RSA-3246-2002 on 28.09.2007 had passed the following order :

“This judgment shall dispose of RSA No.3531 of 2002, filed by the Union of India and RSA No.3246 of 2002, filed by the State of Punjab. Both these appeals have been filed against the judgments and decree passed by both the Courts below, whereby suit of the plaintiffs for declaring them as owners in possession of the suit property has been decreed.

After hearing counsel for the parties and going through the impugned judgments and decree, I do not find any merits in these appeals.

Undisputedly, more than 150 families are residing in the houses constructed by them on the disputed land. The said Basti known as Basti Barud Kutian/Daru Kutian. All the plaintiffs are in occupation of the houses/site underneath since the time of their forefathers. According to the plaintiffs, the land was gifted orally to their forefathers by late Maharaja of erstwhile State of Patiala, before the independence and since then, the plaintiffs or their forefathers are continuously coming in possession of the suit property and they are residing there after constructing pacca houses.

Both the Courts below have recorded a finding of fact to the effect that the plaintiffs are in possession of the suit property and they are residing in these houses for the last 60-70 years from the time of their forefathers. The plaintiffs or their predecessors constructed these houses on the disputed land long back. In the revenue record i.e. jamabandis for the years 1949-50 to 1991-92, Abadi/Basti Barud Kutian/Daru Kutian are recorded in possession of the suit land as Jabran Najaij Kabja and Bilalagan Kabja. It has been found that possession of the plaintiffs on the suit property is adverse for the last more than 50 years. Therefore, they have become owners in possession of the suit land.

During the course of arguments, it has been pointed out by counsel for the respondents(plaintiffs) that even in the sale deed Ex.DA, executed by the State of Punjab in favour of Union of India, 38 bighas 9 biswas of land has been shown to be in adverse possession of Abadi/Basti Barud Kutian, It has also been pointed out that vide judgment and decree dated 27.11.1986, Ex.PX and Ex.PY, one Niranjhan Dass and Gurcharan Singh got themselves declared as owners of land measuring 6 bighas 2 biswas, out of the suit land, on the basis of their adverse possession, The appeal filed by the Union

of Indian against the said judgment and decree was dismissed and the same has become final.

In view of the said finding of fact, I do not find any merit in both these appeals. Counsel for the appellants could not point out any illegality or infirmity in the finding of fact recorded by both the Courts below.

No substantial question of law is involved in these appeals.

Dismissed.”

8. In the present case, as also admitted by the appellant herein in the affidavit dated 27.05.2024 filed by Mr. Vineet Kumar, Executive Director(A), SAI NS NIS, Patiala, one of the khasra numbers of the land involved herein is the same as that involved in the above mentioned two regular second appeals decided on 28.09.2007. One hundred eight four (184) persons had filed the suit [Civil Suit No.320-T] and were held to be owners by way of adverse possession.

9. Both the Courts i.e. the Trial Court and the First Appellate Court have concurrently found that plaintiff-respondents No.1 and 2 were in possession of the property since prior to 1948. The revenue record was produced by PW-1 Om Parkash, Patwari of the Halka. Ex.P-1 to Ex.P-4 are certified copies of the Jamabandis for the year 1949-50, 1957-58, 1966-67 and 1981-82. Ex.P-5 is the certified copy of Khasra Girdawari for the year 1950-51 to 1953-54. Ex.P-6 is the certified copy of Khasra Girdawari for Kharif 1982 and Ex.P-7 is the certified copy of Khasra Girdawari upto the

year 1961-62. In all these revenue documents the Punjab Government was recorded as the owner but the possession was mentioned to be of the persons as stated in the jamabandis and khasra girdawari. The possession has been described to be as *Gair Mumkin*. It is not the case set up by the State of Punjab that they ever made any effort to get the property vacated since 1958 when they are stated to have purchased the property from the Maharaja of erstwhile State of Patiala. Infact, there is not an iota of evidence on the record that any effort was ever made to try and evict the plaintiff-respondents No.1 and 2 from the suit property. Their possession has been open, hostile and adverse. The said fact also stands admitted in the sale deed which was eventually executed in favour of the appellant herein by the State of Punjab on 23.03.1988. Infact, the said sale deed was never brought on the record either by the appellant herein or by the State of Punjab. After the order dated 15.05.2024 passed by this Court, an application being CM-5779-C-2024 has been filed by the appellant herein under Order 41 Rule 27 CPC for placing on record the sale deeds as well as certain judgments and decrees passed by the Trial Court and the First Appellate Court whereby the suits filed by the similarly situated persons have been dismissed and qua which regular second appeals are pending. The sale deed dated 10.03.1958 which has been appended with the application as A-1 is the one executed by the Maharaja of erstwhile State of Patiala in favour of State of Punjab. A-2 is the agreement dated 02.05.1961 between the State of Punjab and the Maharaja of erstwhile State of Patiala wherein time line has been mentioned qua the handing over of possession of certain parts of the property therein. A-3 is the

sale deed dated 23.03.1988 executed by the State of Punjab in favour of the appellant herein. The said sale deed refers to an agreement to sell pertaining to the year 1961. It is pertinent to note that the said sale deed has been executed after 27 years from the date of the agreement to sell. In 1988 the appellant herein was well aware of the pending litigation i.e. the present suit and the other suits filed by the plaintiffs and the other residents of *Basti Daru Kutian*, yet the appellant chose to purchase the said litigation. Infact when the application under Order I Rule 10 CPC was filed by the appellant herein for being impleaded as a party before the Trial Court, there was no sale deed in their favour and the application was filed only on the basis of an agreement to sell. Strangely the agreement to sell has never seen the light of the day. Even today along with the application being CM-5779-C-2024 for placing on record certain documents, the agreement to sell has not been placed on the record though in the sale deed it finds mention that right of ownership of the property would take effect from 08.03.1961. Be that as it may, no efforts were ever made either by the State of Punjab or the National Institute of Sports (appellant herein) to get the suit property vacated. The affidavit dated 27.05.2024 filed by Mr. Vineet Kumar, Executive Director(A), SAI NS NIS, Patiala clearly admits and affirms that the suit land mentioned in RSA-3246-2002 and RSA-3531-2002 is part of the same sale deed dated 23.03.1988, which has inadvertently been mentioned as 03.03.1988 in the affidavit. It is further not denied by the learned counsel for the appellant that the said order dated 28.09.2007 passed in RSA-3246-2002 and RSA-3531-2002 was never challenged by the appellant herein and the

same attained finality. Even till date, the parties to that litigation are in peaceful possession of the property. Learned counsel for the appellant has not been able to convince this Court that the fate of the present appeal would have to different from that of the regular second appeals being RSA-3246-2002 and 3531-2002 decided earlier on 28.09.2007. Once the point stands decided by this Court vide order dated 28.09.2007 and the said order has attained finality, there is no reason for this Court to take a different view more so when no distinguishing factors have been brought forth. The argument of the learned counsel for the appellant that other connected appeals are pending would be no ground to adjourn the present appeal which pertains to the year 1987.

10. In view of the above, no question of law, much less any substantial question of law, arises for determination in the present case. The appeal being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

27.05.2024

Aman Jain

(ALKA SARIN)

JUDGE

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*