

**Sr. No.154**

**Date of Decision : March 04, 2024**

VS.

Mohinder Gir and another .... Respondents

\* \* \*

Present : Mr. Sanjiv Gupta, Advocate  
for the appellant.

\* \* \*

**GURBIR SINGH, J. :**

1. The present appeal has been filed against the concurrent findings recorded by the Court of learned Civil Judge (Junior Division), Sirsa (hereinafter referred to as – the Trial Court), vide judgment and decree dated 23.11.2021 and by learned Additional District Judge, Sirsa (hereinafter referred to as – Lower Appellate Court), vide judgment and decree dated 12.02.2024.

2. Mohinder Gir and Kishan Chand, who are respondents no.1 and 2 before this Court, are the plaintiffs before the learned Trial Court, whereas appellant herein namely Kushal Chand is the sole defendant. However, parties hereinafter shall be addressed as per their original status in the suit.

**3.** The brief facts, which are necessary for just decision of the present appeal, are that plaintiffs namely Mohinder Gir and Kishan Chand filed suit for possession of land, as mentioned in the heading of the plaint, along with

MONIKA relief of permanent injunction restraining the defendant from transferring the  
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possession of the suit property in favour of any other person except the plaintiffs and also for payment of mesne profits.

4. It is the case of the plaintiffs that they had purchased the suit property from Dharam Chand – father of the defendant, vide sale deed dated 19.02.2010. Mutation bearing No.6490 was also sanctioned in favour of the plaintiffs. Further case of the plaintiffs is that earlier, the defendant had filed a suit for declaration titled **Khushal Chand vs, Dharam Chand and others**, claiming his ownership over the suit property on the basis of alleged family settlement against his father Dharam Chand. The plaintiffs were also impleaded as party in the said suit and defendant and also challenged sale deed dated 19.02.2010 executed by Dharam Chand in favour of the plaintiffs. The said suit was partly decreed vide judgment and decree dated 25.03.2015 and it was held that the defendant (plaintiff in that suit) had not become owner of the suit property on the basis of alleged family settlement. The plaintiffs were not bona fide purchasers. The defendant was found to be in settled possession and it was observed that he could not be dispossessed therefrom except in due course of law.

5. The plaintiffs, who were arrayed as defendants in that suit, challenged the said judgment and decree dated 25.03.2015 by filing appeal. The said appeal was dismissed and judgment and decree dated 25.03.2015 was affirmed. Since no party had preferred second appeal, the said judgment and decree dated 25.03.2015 attained finality. It is the case of the plaintiffs that the plaintiffs are owners of the suit property vide sale deed dated 19.02.2010. So, they are entitled for its possession.

6. Defendant contested the suit and filed written statement, stating

therein that during pendency of the suit, Dharam Chand, in collusion with present plaintiffs, executed a null and void sale deed in favour of present plaintiffs in order to defeat the rights of the defendant. The plaintiffs were also impleaded in the said suit. The learned Court held that the plaintiffs were not bona fide purchasers. The alleged sale deed dated 19.02.2010 was the result of collusion between Dharam Chand and plaintiffs. The sale deed was executed during the pendency of the suit with the ulterior motive. In the judgment and decree dated 06.09.2017, it was held that the plaintiffs were not the bona fide purchasers of suit property.

7. From the pleadings of the parties, the following issues were framed by the Court below :-

- “1. Whether the plaintiffs are entitled to possession of the suit property as prayed for? OPP*
- 2. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP*
- 3. Whether the plaintiffs are entitled to receive mesne profits of the suit property as prayed for? OPP*
- 4. Whether the suit is not maintainable in present form? OPD*
- 5. Whether plaintiffs have no cause of action and locus-standi to file the present suit? OPD*
- 6. Whether the suit of the plaintiffs is barred by limitation? OPD.*
- 7. Whether the plaintiffs have concealed the true and material facts from the court? OPD.*
- 8. Whether the plaintiffs have not affixed ad-valorem court fee? OPD.*
- 9. Whether the suit of plaintiffs is bad for non-joinder of necessary parties? OPD.*

10. *Relief.”*

8. On the basis of evidence led on the file, it was held that the plaintiffs were owners of the suit land on the basis of sale deed dated 19.02.2010. The defendant was held liable to hand over the vacant possession of the suit land to plaintiffs. Since the defendant was already in possession of the suit land even prior to the execution of sale deed dated 19.02.2010 and his possession was no where illegal possession, therefore, the plaintiffs were not held entitled for relief of mesne profits. The plaintiffs were also held entitled for relief of permanent injunction.

9. Against the aforesaid judgment dated 23.11.2021, appeal was also filed by the defendant, which was dismissed vide judgment and decree dated 12.02.2024.

10. Learned counsel for the appellant/defendant has argued that the appellant is in possession of the suit property for the last more than 35 years. In the earlier suit filed by the appellant, it was held that the appellant was in settled possession of the suit property. Plaintiffs were also impleaded in that suit as parties as they purchased the suit property during pendency of the said case. The said suit was partly decreed on 25.03.2015. The appeal filed by present plaintiffs was dismissed.

11. Since the alleged sale was executed during the pendency of the case, same was hit by *lis pendens*.

12. In the earlier suit, the plaintiffs took a specific plea that they were bona fide purchasers of the suit property but it was rightly declined by the learned Trial Court. It was further held that Dharam Chand was not in possession of the suit land at the time of execution of sale deed dated

19.02.2010 and so, he did not hand over the possession of the suit land to the plaintiffs. The learned Appellate Court vide judgment and decree dated 25.03.2015 also held that the appellant/defendant was not in illegal possession, rather he was in established possession. It is further argued that there was wrong recital in the sale deed dated that possession was handed over to the plaintiffs. When plaintiffs are not found in possession, then they could not file suit for possession. In another case titled **Daulat Ram vs. Dharam Chand**, for specific performance, it was also held that the plaintiffs were not bona fide purchasers of the suit property. Since Dharam Chand did not seek possession of the suit property and defendant/appellant has been in possession of suit property for the last 30 years and after sale deed, plaintiffs never came in possession, so, the suit is barred by limitation. A person can seek possession of immovable property only within 12 years and not thereafter. Reliance in this regards has been placed on **Nazir Mohamed vs. J. Kamala and others** – *Law Finder Doc Id #1738481*, **Amar Nath (died) through his LRs vs. Kabal Singh and others** – *Law Finder Doc Id #19061* and **Challa Srinivasa Rao and another vs. Challa Subbarao and others** – *Law Finder Doc Id #360299*.

13. I have heard learned counsel for the appellant and perused the case file.

14. In case **Madhukar Nivrutti Jagtap & Ors. vs. Smt. Pramilabai Chandulal Parandekar & Ors.** – *Law Finder Doc Id #1561532*, it is held by Hon'ble Supreme Court that transfer made during pendency of suit is not illegal or void ab initio. The effect of doctrine of lis pendens is not to annul all transfers effected by parties to suit but only to render them subservient to

the rights of the parties under decree or order which may be made in that suit. The relevant extract of the said judgment reads as under :-

**“14.3.** *The aforesaid observations in no way lead to the proposition that any transaction on being hit by [Section 52](#) *ibid.*, is illegal or void ab initio, as assumed by the High Court. In [Sarvinder Singh](#) (*supra*), as relied upon by the High Court, the subsequent purchasers sought to come on record as defendants and in that context, this Court referred to [Section 52](#) of the T.P. Act and pointed out that alienation in their favour would be hit by the doctrine of *lis pendens*. The said decision is not an authority on the point that every alienation during the pendency of the suit is to be declared illegal or void. The effect of doctrine of *lis pendens* is not to annul all the transfers effected by the parties to a suit but only to render them subservient to the rights of the parties under the decree or order which may be made in that suit. In other words, its effect is only to make the decree passed in the suit binding on the transferee, i.e., the subsequent purchaser. Nevertheless, the transfer remains valid subject, of course, to the result of the suit. In the case of [A. Nawab John](#) (*supra*), this Court has explained the law in this regard, and we may usefully reiterate the same with reference to the following:-*

**18.** *It is settled legal position that the effect of [Section 52](#) is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, determined in the suit. In other words, the*

*transfer remains valid subject, of course, to the result of the suit. The pendent lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the court.”*

15. In case **Inderjeet Wadhwa vs. Jagjit and another** – *Law Finder Doc Id # 82329*, it is held by this Court that in case of transfer during pendency of the case, such transferee will not have an independent right. He only steps into the shoes of his vendor and would be bound by the decree that may be passed in the suit against the vendor. The plea of bona fide purchaser without notice of litigation will not be available to such purchaser.

16. In the earlier suit filed by the appellant, whereby challenge was made to the sale deed dated 19.02.2010, the said sale deed was not set aside. Since sale deed was made during pendency of the case, the same cannot be considered as illegal transfer and it was subject to the decision of the said suit. The plaintiffs actually have stepped into the shoes of their vendor Dharam Chand and in the said suit, it is held that the defendant is in settled possession and he can be dispossessed therefrom only in due course of law. So, the instant suit was filed to take possession. Although in the earlier suit, the plaintiffs took plea of bona fide purchasers which was not accepted since the sale took place during pendency of the case, but non-acceptance of such plea had no adverse effect on the sale transaction and no declaration was given that the sale was null and void.

17. By purchasing the property, the plaintiffs have stepped into the shoes of Dharam Chand. If a suit is filed for possession of immovable

property based on previous possession, and not on title, then limitation to file the suit is 12 years from the date when the plaintiff, while in possession of the property, has been dispossessed, as per Article 64 of the Limitation Act. In case, the suit is filed for possession of immovable property or any interest therein on the basis of title, then limitation is 12 years, when possession of the defendant becomes adverse to the plaintiff. In the case in hand, suit was not filed on the basis of previous possession, but suit has been filed on the basis of title. So, provisions of Article 65 of the Limitation Act, 1963 are attracted. Articles 64 and 65 of the Limitation Act read as under :-

***“PART V – Suits Relating to Immovable Property***

| <i>Description of Suit</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <i>Period of Limitation</i> | <i>Time from which period begins to run</i>                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|------------------------------------------------------------------------------|
| <i>64. For possession of immovable property Twelve years. The date of based on previous possession and not on title, dispossession.</i>                                                                                                                                                                                                                                                                                                                                      | <i>Twelve Years</i>         | <i>The date of dispossession</i>                                             |
| <i>65. For possession of immovable property or any interest therein based on title; Explanation.- For the purposes of this article -</i><br><i>(a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;</i><br><i>(b) where the suit is by a Hindu or</i> | <i>Twelve Years</i>         | <i>When the possession of the defendant becomes adverse to the plaintiff</i> |

*Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;*

*(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession*

**18.** In case **Bayyarapu Narayana Raidu and another vs. Pagadala Varalaxmi** – **Law Finder Doc Id #631745**, it is held by Hon’ble Andhra Pradesh High Court that -

*“17. Both the courts in my opinion, have committed a grave error in not noticing the change in law brought about by the Limitation Act, 1963 from the earlier Limitation Act, 1908. In **Md. Mohammad Ali v. Jagadish Kalita, 2004 (1) SCC 271**, the Apex Court pointed out:*

*“By reason of the Limitation Act, 1963 the legal position as was obtaining under the old Act underwent a change. In a suit governed by Article 65 of the 1963 Limitation Act, the plaintiff will succeed if he proves his title and it would no longer be necessary for him to prove, unlike in a suit governed by Articles*

*142 and 144 of the Limitation Act, 1908, that he was in possession within 12 years preceding the filing of the suit. On the contrary, it would be for the defendant so to prove if he wants to defeat the plaintiff's claim to establish his title by adverse possession.*

*21. For the purpose of proving adverse possession/ouster, the defendant must also prove animus possidendi.”*

*This has again been reiterated in **Saroop Singh v. Banto, AIR 2005 Supreme Court 4407**. So under the 1908 Act, the plaintiff not only had to prove his title but also had to prove his possession within twelve years preceding the date of institution of the suit in order to recover possession of immovable property. But under the 1963 Act, there has been a change in law and in a suit attracting Article 64 and 65 of the said Act, the plaintiff has only to prove his title and it is for the defendant to prove acquisition of title by adverse possession.”*

**19.** The defendant/appellant has not set up the plea that his possession was adverse. A person, who is in possession without any title, can claim adverse possession against the owner. It is not the case of the appellant that his possession is adverse to the owner. In the earlier case, defendant took the plea that suit property was given by his father in the family settlement, which plea, he failed to prove. So, at the most, possession of defendant is permissive possession and the suit cannot be held to be barred by limitation.

**20.** The authorities cited by learned counsel for the appellant are of no help to the appellant. An owner of the property cannot be deprived to get

possession of the property.

21. In the light of the above discussion, it is held that there is neither any misreading nor misappreciation of evidence on record. No question of law, much less substantial question of law, arises in the present appeal. So, the appeal is without any merit and the same is accordingly dismissed in limine.

22. Pending applications, if any, shall stand disposed of along with this judgment.

March 04, 2024  
monika

(GURBIR SINGH)  
JUDGE

|                             |         |
|-----------------------------|---------|
| Whether speaking/reasoned ? | Yes/No. |
| Whether reportable ?        | Yes/No. |