

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2191 of 1990 (O&M)
Reserved on: 09.04.2024
Date of Order:25.04.2024

Hakam Singh and others

.Appellants

Versus

Beela Singh (since deceased) through LRs

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwaljeet Singh Brar, Advocate and
Mr. J.S.Brar, Advocate
for the appellants.

Dr. Anmol Rattan Sidhu, Sr. Advocate, with
Mr. Gursher Singh Dhillon, Advocate
for the respondent.

ANIL KSHETARPAL, J

1. This is the defendants' regular second appeal against the judgment and decree passed by the First Appellate Court which in turn has reversed the judgment and decree passed by the trial court resulting in decreeing the plaintiff's suit for the grant of decree of declaration that he has become owner by way of adverse possession of land measuring 237 kanals and 15 marlas and the defendants are not entitled to get possession of the property pursuant to instrument of partition.

2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

3. Smt. Sham Kaur was owner of 1/3rd share in the joint land measuring 715 kanals and 12 marlas. She sold her share in favour of Sh.

Karam Singh vide registered sale deed dated 13.05.1959. Sh. Karam Singh

filed an application on 01.08.1960, before the revenue Court for partition of the joint land. The same was contested by the plaintiff on the ground that Smt. Sham Kaur was not a co-sharer and she had no right to execute the sale deed. He also stated that he had been in possession of the entire land for the past 50 years adversely to everyone. In fact, there had been a family partition in which the entire land, including the land in dispute had fallen to his share. In the beginning, the Assistant Collector Ist Grade dismissed the application for partition vide his order dated 10.11.1961 on the ground that the question of title has been raised which could be settled only in a civil suit. However, in appeal, the order was reversed. Eventually, the revenue court ordered partition of the land on 31.07.1973 which was executable with effect from the Kharif crop of the year 1974. During the pendency of the aforesaid partition proceedings, Sh. Karam Singh, the purchaser, was murdered on 25.09.1969, by the plaintiff's son, who was convicted and sentenced to life imprisonment. On 01.05.1974, the appellants, who are successor-in-interest of Sh. Karam Singh filed an application seeking delivery of possession in execution of the order of partition. Warrants of possession dated 07.05.1974 were issued, however, defendants were not available in the village to take delivery of possession because of murder of Sh. Karam Singh. As many as three attempts were made. Ultimately, the Assistant Collector Ist Grade consigned the file to the records in default. In the year 1984, the defendants filed the second application for delivery of possession which was rejected by the revenue officer on 19.02.1985. In between, the plaintiff filed suit on 25.07.1984, which was withdrawn on 06.08.1985 , in view of dismissal of the second execution petition. The defendants then filed the third application for delivery of possession. The

Assistant Collector sought permission to review the previous order which was granted by the Collector. The revision petition filed by the plaintiff was dismissed by the Commissioner on 03.01.1989, which was again upheld by the Financial Commissioner vide order dated 02.06.1989. In between, the plaintiff (respondent herein) filed the civil suit on 13.01.1987. In substance, the plaintiff has prayed for the several reliefs:-

(i) That declaration to the effect that he had become owner of the land in dispute by adverse possession and any title vesting in the defendants stood extinguished by lapse of time and they were not entitled to obtain possession from revenue authorities in execution of order of partition dated 31.7.1973.

(ii) That order dated 23.12.1986 of Collector, Bathinda, allowing the Assistant Collector First Grade to review the order dated 19.2.1985 was illegal and in-effective, and

(iii) for permanent injunction restraining the defendants from getting possession of the disputed land by virtue of Sanad Taksim and the order of the Assistant Collector, The plaintiff pleaded that the defendant's first application having been finally disposed of on 9-7-1975, no further application was competent after the lapse of period of three years under section 122 Land Revenue Act. Thus, any order of review was illegal, secondly, the procedure followed by the Assistant Collector First Grade, Talwandi Sabo and the Collector, Bathinda, was illegal since the review was permissible only within a period of 90 days. Thirdly, there was no valid ground for the review of the order dated 19-2-1985. The plea of adverse possession was also pressed into service. It was pleaded that the plaintiff was in exclusive, continuous possession of the entire land for the past more than 50 years. Karam

Singh, father of the defendants, never came into possession of any part of the land and after his death also, the defendants never came into possession, His possession on the remaining land was adverse, open, hostile, notorious, uninterrupted and to the knowledge of all including Karem Singh and thereafter the defendants for a period of more than 12 years. He never paid any share of the produce, Chakota etc, to them even after the passing of the partition order dated 31.7.1973, he had been in continuous possession adversely, openly, in a hostile manner, to the knowledge of the defendants till the date of filing of the suit. On account of adverse possession, any right or title vesting in the defendants was rendered extinguished. The plaintiff had sown the wheat and sarson crops.

4. The defendants (appellants) contested the suit claiming that the possession of the plaintiff was noway adverse and the litigation was pending throughout.

5. The trial court dismissed the suit which as already noticed, has been reversed by the First Appellate Court.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record. The written note of submissions has also been filed by the learned counsel representing the parties. The appellants' written note read as under:-

“That vide order dated 3.4.2024 subsequent purchasers are substituted in place of original appellants/defendants Hakam Singh and others and hence notes containing the gist of their arguments as to the issues which require adjudication from the Hon'ble

Court are as under:-

(i). Karam Singh (father of defendants Hakam Singh and others) purchased 1/3rd share of Sham Kaur original co-sharer out of 715 Kanal 12 Marla and on 1.8.1960 he moved application for partition of land for separating his share. In reply to this application plaintiff Beehla Singh claimed his possession over the land firstly under oral family partition and not adverse, hostile under the colour of title to the knowledge of Karam Singh co-sharer for continuous period of 12 years. He only in the alternative averred that in case his possession under family partition was not accepted, then it be treated as hostile.

(ii). Plea of getting the disputed land in family partition and in the alternative on the basis of adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. It is not pleaded or proved when plea of family partition was renounced and of adverse possession was claimed by Beehla Singh. It is inherent in the plea of adverse possession that defendants are the owners.

(iii). Plaintiff has not pleaded ouster in the plaint. Whereas he was in possession as a co sharer, he cannot simply claim adverse possession without pleading and proving ouster. It is a case of Co-owners and no element of either adversity or hostility between them is pleaded and proved as per law. Animus possidendi is not demonstrated. It was not shown to be existing at the commencement of the possession. In dispute of such nature where both parties are related to each other, possession of one is regarded to be possession of other unless acts show otherwise. Possession of property by a co-sharer is deemed to be possession on behalf of other co- sharers unless there is a clear ouster by denying title of the other co- sharers. Possession of plaintiff not

started with a wrongful dispossession of true owners and in this case it is not exclusive, hostile and continued over the statutory period.

(iv). No specific mention of factum of mortgage by plaintiff was made in the plaint so aspect of mortgage of more than share cannot be invoked to claim ouster in the absence of this plea.

(v). No specific acts and circumstances constituting adverse possession are pleaded and proved. Even no date, month or year as to when adverse possession of plaintiff started against defendants Hakam Singh and others is averred in plaint. Plaintiff failed to plead and prove that his possession is open, undisturbed and continuous to the knowledge of defendants. Plaintiff did not plead and establish when he came into possession.

(vi). Mere possession, howsoever long it may be, does not necessarily mean that it is adverse to true owner. In para no.7 of replication plaintiff averred that after partition, his possession became adverse and forcible and not that of co-sharer.

vii). In revenue record possession of Beehla Singh is recorded only as co-sharer and not adverse against defendants, EX. P-1 Khasra Girdawari Harri 1975 to Sauni 1979, Ex.P-2 Khasra Girdawari Harri 1980 to Sauni 1984, Ex. P-3 Khasra Girdawari Harri 1985 to Sauni 1989, Ex. P- 18 Jamabandi for the year 1969-70, Ex. P-19 Jamabandi for the year 1974- 75, Ex. P-13 Jamabandi for the year 1979-80, Ex. P-20 Jamabandi for the year 1984-85 depict possession of Beehla Singh on major portion of suit land as co-owner and on the other possession of his mortgagees.

(viii) In instrument of partition Ex.P-11 (which was never challenged by the plaintiff before revenue authority) it was specified Harri 74 as the date from

which the partition is to take effect. Therefore till that date plaintiff could not claim himself to be in adverse possession.

(ix). Under section 122 of the Punjab Land Revenue Act defendants could at any time within 3 years from the date when partition was to take effect were to apply for taking possession of the land before the revenue officer. Those 3 years were to expire in June 1977 when Harri crop was to be harvested. From that date till filing of the present suit possession of plaintiff over the suit land did not ripen into full ownership as suit was bought by him on 13.1.1987 before expiry of 12 years. Defendants i.e. owners have not abandoned the property to the plaintiff.

(x). Appellants admittedly were moving applications to take possession since 1.5.1974 and on their applications warrant of possession was issued thrice firstly 7.5.1974 Ex, P-9 secondly for 22.9.1974 Ex.P-26 and thirdly for 1.7.1975 Ex. P-10 but it remained unexecuted due to murder of their father at the hands of son of plaintiff. (xi). Adverse possession cannot be perfected into a title howsoever long it may be, when proceedings for restoration of possession by a true owners i.e. defendants were pending for all the 12 years or major part thereof. Adverse possession ripens into title only if said possession is hostile, uninterrupted and without any protest by true owners. Due to murder of Karam Singh father of original appellants by the son of Plaintiff who is the Nambardar of the village, Plaintiff tried to hold on to his unauthorized possession during this period and such possession if over a period of 12 years cannot confer any title whatsoever. (xii). Plea of adverse possession was already rejected in partition proceedings and instrument of partition was ordered to be prepared by the revenue officer. (xiii). Jurisdiction of civil court to challenge the

orders passed by the revenue authorities is barred as per Section 158 of the Punjab Land Revenue Act. (xiv). On 5.5.1989 revenue authorities delivered Possession to appellants. Hence Ld. Trial Court was justified in not declaring plaintiff as owner by virtue of adverse possession.”

7. The defendant's written notes read as under:-

Question of ownership by adverse possession of the Respondent/ Plaintiff has been rightly decided by the Ld. First Appellate Court as the Respondent/Plaintiff was in continuous, uninterrupted, Hostile and known adverse possession of the land in dispute since about 50 years prior to the filing of the suit, the Respondent/Plaintiff never paid any rent to anyone, moreover there was complete ouster of the Appellants as the Respondent/Plaintiff was mortgaging and selling parts of the land and enjoying the income whereas the Appellants were completely ousted and were admittedly not in possession. And in his reply before the AC Grade-I in partition proceedings in 1960 the Respondent/Plaintiff claimed to be owner in possession of the land in dispute therefore showing the knowledge of the Appellants about the adverse possession of the Respondent/Plaintiff from 1960.

2. Once the order of Partition was passed the Joint status of the Parties came to an end and the possession of the Respondent/Plaintiff over the portion of the Appellant would be seen as adverse in nature, therefore as the order of partition was passed on 31.07.1973 the period of 12 years, even if counted from that date, elapsed before the filing of the suit in 1987 therefore the adverse possession of the Respondent/plaintiff had ripened into ownership at the time of filing of the suit as even during

this period the possession of the Respondent/plaintiff was uninterrupted and continuous which is also evident from the fact that the Appellants were trying to get possession by filing multiple applications before AC Grade-I but were unsuccessful, meaning thereby the Respondent/plaintiff was in uninterrupted and continuous adverse possession as has been rightly observed by the Ld. First Appellate Court (finding at internal page 13, Para 11 AC Judgement)

3. *The order dated 23.12.1996 of Collector, Bathinda allowing the AC Grade- 1 to review the order dated 19.02.1985 is illegal as the Appellants first application stood finally disposed on 09.07.1975 and thereafter any further application cannot be entertained as it would fall outside the period of 3 years as prescribed under Section 122 of the Land Revenue Act, the Appellants tried to illegally extend the limitation by portraying subsequent application as being a continuation of the previous proceedings which has not been accepted by the Ld. First Appellate Court (finding at internal page 19, Para 19 AC Judgement)*

4. *Order dated 19.02.1985 passed by AC Grade-I rejecting the subsequent application for possession of the Appellants was valid and on sound reasoning of delay, there was no ground for AC Grade-I to seek review of this Order on the ground that the proceedings could not be completed initially as the Appellants were not available in the village in 1974/75 due to murder of their father in 1969, this ground cannot be used to exercise jurisdiction of review under Section 15 Land Revenue Act. (finding at internal page 22, Para 20 of AC Judgement).*

5. *Finding of the Ld. Trial Court that Possession was delivered to the Appellants on 05.05.1989 is completely erroneous and unsustainable and has been rightly*

rejected by Ld. First Appellate Court as firstly even if it is presumed that possession was delivered it would be during the Pendency of the Suit and the same would have no legal effect, secondly as rightly observed by the Ld. First Appellate Court possession was never actually delivered to the Appellants and the same was only a paper transaction as the major chunk of the land in dispute was mortgaged to several mortgagees, they were neither party to the Partition proceedings and nor were they present at the time of delivering possession therefore the order of partition could not effect their rights and it is highly improbable that physical possession of the entire land was handed over to the appellants and despite being allegedly informed not a single mortgagee came present. Further allegedly even the Respondent/plaintiff allegedly did not come present. Moreover various depositions including DW-1 Bant Singh, DW-4 Gurdev Singh show that out of the entire village the only two persons present were collaterals of Appellant Hakam Sing and sarpanch Gurjit Singh who was allegedly present did not append his signatures on the report and while appearing as PW-6 he states that he was never present. Further there are various evidences to show major lapses which prove that no possession was delivered to the Appellants in 1989 and the same was a paper transaction. (finding at internal page 25, Para 22 of AC Judgement)

Issues to be decided by this Hon'ble Court

- 1. Whether the finding of the Ld. First Appellate Court regarding continuous, uninterrupted and hostile, adverse possession of the Respondent/plaintiff over the land in dispute is correct and did the Respondent/plaintiff become owner in possession of the land in dispute through adverse possession?*
- 2. Whether after the Partition order was passed, the*

Respondent/Plaintiff and Appellants would continue to be co-sharers and whether after passing of the Partition order in 1973, the Respondent/Plaintiff was in continuous and uninterrupted adverse possession of the portion of the Appellant before filing of the suit in 1987?

3. Whether the order dated 23.12.1996 of Collector, Bathinda allowing the AC Grade- I to review the order dated 19.02.1985 is illegal and the subsequent application for possession of the Appellants in 1984 was barred by limitation as prescribed under Section 122 of the Land Revenue Act.

4. Whether review of order dated 19.02.1985 could be sought while exercising jurisdiction of review under Section 15 Land Revenue Act only on that the proceedings could not be completed initially as the Appellants were not available in the village in 1974/75 due to murder of their father?

5. Whether possession was actually delivered to the Appellants on 05.05.1989 or the finding of the Ld. First Appellate Court is correct that it was merely a paper transaction?"

8. At this stage, it would be appropriate to examine the correctness of first appellate court's reasons while accepting the appeal.

9. The first reason is that Sh. Beehla Singh was in continuous possession of the land. It is well settled that mere long possession does not necessarily lead to conclusion that the possession is adverse unless animus possidendi is proved on the date when they entered into possession. It is evident that Smt. Shyam Kaur and Sh. Beehla Singh are related through their extended family. While filing the reply to the partition application, Sh. Beehla Singh claimed that he is in possession on account of family

settlement. Thus, his possession was permissive. In any case, his possession was as a co-sharer. By legal fiction, every co-sharer is assumed to be in possession of every part of the land.

10. The second reason that Sh. Beehla Singh had mortgaged major part of the land resulted in ouster of Smt. Sham Kaur and thereafter, Sh. Karam Singh is also wrong because mortgaging a major part of the suit land was by a co-sharer. Additionally, Sh. Beehla Singh was a co-owner of the property. Hence, it would not amount to ouster.

11. Reason no.3 recorded by the First Appellate Court to the effect that after 31.07.1973, when partition was ordered, the period of 12 years has elapsed and therefore, Sh. Beehla Singh's possession has ripened into title. The calculation of period of 12 years is factually incorrect particularly in view of the fact that the defendants have been making efforts to get the possession of the land by filing three successive applications, the first filed on 01.05.1974, the second filed in the year 1985 and the third one filed in the year 1985. Those applications remained pending before the authorities upto 02.06.1989 i.e. much after the filing of the present suit. Hence, the First Appellate Court has erred in calculating the period of 12 years from 31.07.1973, particularly when efforts were being made by the defendants to take possession through court of law.

12. The fourth reason of the First Appellate Court to the effect that the possession was never interrupted also lacks substance because possession was interrupted when efforts were made to take possession of the property by instituting partition proceedings in the year 1971. Thereafter, repeatedly, by filing successive applications to take over the possession, ultimately the possession was delivered in the year 1989.

Hence, the First Appellate Court has erred.

13. The finding recorded by the First Appellate Court that Sh. Beehla Singh's adverse possession can be assumed from 01.11.1960 on the day he filed the reply the partition petition is also incorrect because the severance of status between the parties as co-sharer would come into effect only with effect from crop 'Kharif 1974'. In May, 1974, the first application for delivery of possession was filed. Hence, Sh. Beehla Singh's possession cannot be adverse from 01.11.1960. Furthermore, the First Appellate Court has also erred in observing that there is a period of three years for delivery of possession from the revenue authorities and thereafter the defendants are required to file a suit within a period of next nine years as three years period has already elapsed. The First Appellate Court has overlooked that proceedings for delivery of possession remained pending continuously from 01.05.1974. There was some gap of nearly 8/9 years between filing of the first application and the second application. However, that would not mature into ownership by way of adverse possession. There was no occasion for the First Appellate Court to calculate the period of 9 years while including the period when proceedings for delivery of possession was pending continuous for a period of 15 years.

14. The First Appellate Court has also erred in observing that subsequent review by the Assistant Collector was beyond the period of 90 days. The First Appellate Court has observed that the review could be made within a period of 3 years from the date of partition order. It may be noted here that the second application filed by the defendants for delivery of possession was rejected by the revenue officer on 19.02.1985, however, subsequently *suo moto* the permission to review the order was sought from

the Collector which was allowed in the year 1986. Moreover in this case the *suo moto* review was sought. Hence, there was no error in reviewing the previous order. The validity of the review was upheld by the Collector in appeal and Commissioner in the revision petition and Financial Commissioner in the second revision petition. Hence, there is no occasion to hold that the subsequent review was illegal.

15. The First Appellate Court has also erred in observing that proceedings for delivery of possession during the pendency of the suit in the year 1989 was a paper transaction. Rapat Roznamcha evidencing delivery of possession by the revenue court officials prove that the possession was delivered. Even if the land was in possession of a large number of mortgagees, still symbolic possession could be delivered to the defendants, who had become entitled to the property pursuant to the date of partition. The First Appellate Court has also erred in observing that the defendants were not residing in the village, therefore, delivery of actual physical possession was not possible. It may be noted here that defendants have been continuously making efforts to take over possession in accordance with law. Ultimately, the possession was delivered to the defendants on 05.05.1989. Hence, the First Appellate Court has erred in declaring that the proceedings for delivery of possession was a mere paper transaction. Reliance placed by the First Appellate Court on oral evidence in preference to documentary evidence including daily diary report was not appropriate. The possession of the mortgagees will be on behalf of the defendants after the delivery of possession.

16. While analyzing the submissions of the learned counsel representing the respondents, it may be noted that mere possession of 50

years during the pendency of the partition proceedings and thereafter in this suit would not result in uninterrupted possession which is the requirement of claiming title by way of adverse possession. Similarly, there is no substance in the second argument because even after there was severance of joint status between the parties from 'Kharif' crop of the year 1974, still the proceedings for delivery of possession remained pending during all this period except break of 8/9 years before the revenue authorities. These proceedings continued after the present suit was instituted. Hence, severance of status as co-owners between the parties would not permit the plaintiff to claim adverse possession from 31.07.1973.

17. The next contention of the learned counsel representing the respondents is also factually incorrect because the Collector's order permitting the Assistant Collector Ist Grade to review was passed in the year 1986 and not on 23.12.1996. A perusal of the record proves that the Collector granted permission to the Assistant Collector to review its previous order vide order passed on 23.12.1996 (Ex.P16).

18. The next contention of the learned counsel of the appellant is also without substance because the defendants were only required to file an application within a period of 3 years. The time taken during the pendency of the petition would not make the proceedings illegal. Still further, the second application filed for review can be treated as an application for restoration of the first application for first execution petition. Moreover, the proceedings under the 1967 Act are not strictly governed by the Code of Civil Procedure, 1908. After the partition order was passed, it was the responsibility of the revenue officer to put the respective parties in possession of the land which fell to their respective share after partition.

19. With regard to the 5th submission, the matter has already been examined in detail and needs to further elaboration. The issues as proposed by the learned counsel representing the respondents have already been answered and need no repetition. All the five issues pointed out by the learned counsel representing the respondent (plaintiff) have elaborately been examined and answered.

20. Keeping in view the aforesaid facts and discussion, the result is inevitable. The appeal filed by the defendants is allowed while setting aside the judgment of the First Appellate Court while restoring the judgment of the trial court.

21. All the pending miscellaneous applications, if any, are also disposed of.

25th April, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO