

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

**Reserved on 7th of March, 2024
Pronounced on 22nd of April, 2024**

**Regular Second Appeal No.278 of 1992 with
Cross objections No.16-C of 1992**

Tek Ram son of Harphool

....Appellant

Versus

Tek Ram son of Mange Ram and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Naveen S. Bhardwaj, Advocate for
Mr. Jagdeep S. Rana, Advocate for the appellant.

None for the cross-objectors/respondents.

PANKAJ JAIN, J.

Defendant is in appeal.

2. For convenience, the parties herein are being referred to by their original position in the suit i.e. the appellant as defendant and the respondents as plaintiffs.

3. Plaintiffs filed suit for possession of the suit property as mentioned in the plaint claiming that their predecessor-in-interest namely Mange Ram son of Chandgi was owner of the suit land. Mange Ram during his lifetime along with plaintiffs constructed boundary wall around the plot. However, a month prior to the institution of suit,

defendant No.1 forcibly occupied the suit plot and constructed a kotha thereon in addition to three khors. Suit was contested by defendant No.1 claiming that construction was raised on the suit property by him in the year 1966. Till then he has continuously occupied the plot without interference from any quarter and thus has become owner of the suit plot/property by way of adverse possession. Defendant claimed in his written statement that Mange Ram agreed to sell the plot to him and in pursuance thereof, he advanced him loan for an amount of Rs.340/- which became Rs.644/- by Samvat 2022 i.e. 1965 as per the Georgian Calendar. It was further claimed that in Samvat 2033 Mange Ram obtained another sum of Rs.1100/- and a bahi entry was executed. It has been thus contended that by way of oral agreement Mange Ram delivered possession of the suit plot to defendant No.1 at the time of securing initial amount of Rs.340/- as loan.

4. The Courts below held that since value of the suit land was admittedly more than Rs.100/- the plea of oral contract of sale cannot be looked into. So far as bahi entries Ex.D1 to D3 are concerned, the same are not only pure loan transactions but also could not be proved to have been executed by Mange Ram. Regarding the plea of construction raised by the defendant is concerned, Trial Court found that the same was raised only in January, 1984.

5. In appeal preferred by the defendant, Appellate Court found

that compromise Exhibit D-4 stands proved and thus defendant was entitled to get refund of Rs.12,000/- from Tek Ram plaintiff.

6. Counsel for the appellant-defendant while assailing the impugned judgments, has argued that plaintiffs having filed suit for possession were required to plead and prove that they were dispossessed within 12 years of the institution of the suit. The plaintiffs having failed to do so, Courts below ought to have dismissed the suit of the plaintiffs. He further submits that once Panchayati agreement was not denied by the plaintiffs in replication, compromise stood validly proved and thus, First Appellate Court ought to have decreed the suit on the basis of compromise.

7. I have heard counsel for the parties and have gone through records of the case with their able assistance.

8. Both the Courts below after appreciating and analyzing the evidence threadbare have come to the conclusion that the plea of adverse possession raised by the appellant/defendant No.1 could not be proved.

9. Plea raised by counsel for the appellant/defendant No.1 that it was for the plaintiffs to plead and prove that they were dispossessed not before 12 years of the filing of the suit, is misplaced and deserved to be rejected. Article 64 and Article 65 of the Limitation Act read as under :

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
64. For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years.	The date of dispossession.
65. For possession of immovable property or any interest therein based on title. Explanation.—For the purposes of this article— (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; (b) where the suit is by a Hindu or 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.	Twelve years.	When the possession of the defendant becomes adverse to the plaintiff

10. In the present case, parties do not dispute that Mange Ram was owner of the suit property. Plaintiffs assert their possession on the basis of title being successors-in-interest of Mange Ram. Thus, the present suit falls within the ambit of Article 65 and not Article 64. Hence, the limitation of 12 years shall commence from the date when the possession of the defendant becomes adverse to the plaintiffs. Thus, it was for the appellant/defendant to assert the date on which his

possession became adverse to the rights of the plaintiffs and to further show that the suit was filed beyond 12 years from the date of commencement of adverse possession. In the present case, though the defendant claimed his possession over the property since the year 1966 by raising construction, however, the Courts below have returned pure finding of fact that the construction was new and was raised only in January, 1984. Thus, the defendant miserably failed to prove that he was in possession of the suit land beyond 12 years from the date his possession became adverse to the plaintiffs.

11. Coming on the second plea raised by counsel for the appellant/defendant w.r.t. there being a Panchayati compromise and the plea that the suit ought to have been decreed in terms thereof, in the considered opinion of this Court, the said compromise is admittedly during the pendency of the suit and the same is a privileged document under Section 23 of the Evidence Act which cannot be relied upon by the defendant to plead admission on part of the plaintiffs. He cannot claim any other benefit apart from the restitution which has been granted by the Appellate Court. Thus, lower Appellate Court has rightly held him entitled for refund of any amount that was paid under the agreement by the appellant to the plaintiffs.

12. In view of pure findings of fact recorded in favour of the plaintiffs and as a sequel of discussion held hereinabove, this Court

does not find any merit in the present appeal and the same is ordered to be dismissed.

13. Since none appeared for cross-objectors, no order is warranted on the cross-objections. The same are dismissed for non-prosecution.

April 22, 2024

Dpr

Whether speaking/reasoned

Whether reportable

:

:

Yes

Yes

(PANKAJ JAIN)

JUDGE