

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1365-1991 (O&M)
Reserved on: 17.05.2024
Date of decision: 29.05.2024

PHULLA AND ORS.

..Appellants

Versus

SEWA SINGH AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

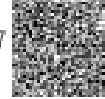
Present: Mr. R.N. Lohan, Advocate
for the appellant No.8, 20, 23, 24, 25 & 31.

Mr. Narayan Prashad Gupta, Advocate
for respondents.

ANIL KSHETARPAL, J.

1. In this regular second appeal, the defendants assail the correctness of judgment passed by the first appellate Court, which in turn has reversed the judgment passed by the trial Court.

2. On 15.10.1985, the respondents-plaintiffs filed a suit for declaration that they are the owners in equal shareholding of the suit land measuring 42 kanals and 13 marlas comprised in Khewat and Khata No. 326/516, as per Jamabandi for the year 1979-1980, located in village Ghattkar and the entries recorded in favour of the defendants are liable to be corrected with a consequential relief of injunction restraining the defendants from taking possession from the plaintiffs. In substance, the plaintiffs claim to be in possession of the suit land for the last hundred years and they also claim to be in cultivating possession for more than 12 years to the knowledge of the defendants without payment of any rent or *chakota* or any interruption from the defendants, hence, they have acquired right of



ownership by way of adverse possession from their forefathers and from 22.12.1969, when they challenged the title of the defendants. The defendants while filing the statement contested the case. It was claimed that the suit land belongs to the defendants and the plaintiffs are in possession as *gair marusi* i.e. tenant at will on payment of land revenue. Hence, they cannot claim to be the owners of the suit property by way of adverse possession. It was submitted that the plaintiffs are in permissive possession in lieu of the work, which their predecessor used to do as blacksmith for the defendants.

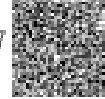
3. The trial Court held that the plaintiffs have proved that they are in adverse possession of the property for more than 12 years without any interruption, however, dismissed their suit after finding that the suit has been filed beyond the period of limitation. The plaintiff filed an appeal, which has been accepted by the learned District Judge. This appeal was admitted for regular hearing and now it has come up for hearing.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record.

5. The learned counsel representing the parties have filed their respective synopsis containing the gist of their arguments.

6. The synopsis submitted by the learned counsel representing the appellants reads as under:-

“That the respondent No. 1 to 4 / plaintiff filed a suit for declaration to the effect that they are owner and in possession of the land in dispute to the extent of 7/8 share and also alleged that they are cultivating the land as owner for the last 100 years and in case there was any deficiency in the title that has been fulfilled on the basis of the adverse possession and also prayed that they are owner in possession in equal share and the entry in the revenue record may be corrected.



*That the finding of the Ld. Courts below that the respondents/plaintiffs have become owner by adverse possession is contrary to pleading, evidence and law. The respondent plaintiff claimed themselves to be owner in possession cannot claim or become owner by way of adverse possession. The plea of adverse possession can be taken against a true owner and the person claiming adverse possession must prove that his possession is a hostile possession by clearly asserting hostile title in denial of title of true owner and must be peaceful, open and continuous in publicity as held by the Hon'ble Supreme Court of India in the matter of **Hemaji Waghaji Jat Vs Bhikhabhai Khengarbhai Harijan & others, (2009) 16 SCC 517.***

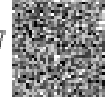
*That if a person claims a lawful title, it cannot be considered to be adverse as held by the Hon'ble Supreme Court of India in the matter of **Annasaheb Bapusaheb Patil Vs Balwant @ Balasaheb Babusaheb Patil (dead) by LRs. & heirs etc., (1995) 2 SCC 543** as well as in the matter of Vidya Devi Vs Prem Parkash (law finder doc ID#37513).*

*The Hon'ble Supreme Court has held in the matter of **Karnataka Board of Wakf Vs Govt. of India and others, (2004) 10 SCC 779**, that it must be inherent in the plea of adverse possession that someone else was the owner. In the present case the plaintiff has not the plaintiff/ respondents are claiming themselves as owner in possession and are not admitting claiming their possession against the true owner and thus the finding of the Ld. Courts below on the adverse possession is contrary to the law settled by the Hon'ble Supreme Court.”*

7. Whereas, the synopsis filed by learned counsel representing the respondents reads as under:-

“It is submitted on behalf of plaintiffs/ present respondents that it is clearly establish by both the court on the basis of oral and documentary record that fore-fathers of the plaintiffs-appellants cane in possession of this land. The said possession has continued in over several years.

In written statement, defendants totally denied the possession of defendant by saying that plaintiff has no concern with suit land. Even they not pleaded the permissive possession of the plaintiff in written statement. But in his evidence as DW-1, defendant asserted at one stage that the plaintiff had never been in possession of the land. And on the other stage that the land was given to the predecessor- in-interest of the



appellants who were the blacksmith in the village. However, the plea in the written statement is that the plaintiffs had never been in possession of the conflicting stand taken by the defendants and admission in the court made by defendants about the possession of plaintiff, knocks at the bottom of their case.

Hence the possession of the plaintiff is not even disputed on behalf of the defendant.

Further even learned First appellate rightly analysis the revenue record and discuss it his judgement with detail (page 71 to 73 of paper book) Relevant portion of judgement are

*“As pointed out earlier entries in column no.9 were Basharah Malikana Change appeared in jamabandi 1959-80 where the entry recorded is Basharah Malikan bila Malikana. This entry was repeated in jamabandi of 1964-65. The appellants have placed on record document Ex. P-X vide which the entry was ordered to be corrected as **basharah malikan bila malikana** in the janabandi 1984-85 which was left blank.”*

*The term “**basharah malikan bila malikana**” has come for consideration before Division of Lahore High Court in Ghulam Murtaza V/s Nagina AIR 1930 Lahore 991 in which Justice Tek Chand and justice Agha Haidar accepted the plea of Adverse Possession on the basis of these long entries.*

*Further in Muthara Dass and another Vs. On Parkash and others, 1989(1) RLR 107 entries were **ghair maurusi bila legan basharah malikan** and it was observed Justice S.D. Bajaj that these entries negative the existence of relationship of landlord and tenant and the plea of adverse possession was accepted.*

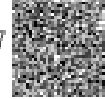
Thus on the strength of the entries in this case and other evidence the both the court below was right in accepting the plea of adverse possession.

Secondly on issue No. 2, This issue has become redundant due to plaintiff has given up the defendant No. 1.

On issue 3 and 4, Mainly objection of the defendants/ present appellant in this appeal is Application under order 1 rule 8 should not be allowed. In this concern application dated 9-10-85 under order 1 rule 8 were allowed to sue the defendants in their personal capacity and also in their representative capacity, by the trial court by passing order and no revision has been filed by the defendants.

On issue 4-C which is main and last objection of the defendants/ present appellant in this appeal, in this regard first appellate court in detail discuss the issue in para 17 onward. Read para 17 onwards.

Relevant portion of the judgement is as under:-

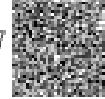


“Cause of action will be said to have been arisen when the right of the plaintiff is actually threatened. Earlier, the suit was withdrawn by the appellants because there was some entry in favour of the provincial government and the suit was likely to fall for want of necessary parties. Permission was allowed on 11.11.1971 and the appellants were allowed to file fresh suit on the same cause of action on payment of cost of Rs.30/-. It is true that no suit was filed by the appellants till 1986 but the fact remains that inspite of the earlier suit having been withdrawn by the appellants even the defendants-respondents did not assert any right to the suit land. The plaintiff appellant continue in possession as before. Their possession in the year 1986 has been more than 12 years, It has been open and hostile and the same has matured into ownerships When this right was threatened by the defendant-respondents on the basis of the revenue entries they came up with this suit. Thus this was a fresh cause of action. to the appellant-plaintiffs and the suit, therefore, cannot be said to be barred by time. It may also be noted here that it was a continuing right and could be asserted as and when right of the plaintiff-appellants was threatened. Thus on this account also the suit could not be said to be barred by time. Under the circumstances of the case finding recorded by the learned trial court on issue no.4-C is not sustainable. The said finding is reversed and the issue is answered in favour of the plaintiff-appellants and against the respondents.”

Another plea of present appellant is that the earlier suit was withdrawn with permission to file a fresh suit subject to costs of Rs.30/-. The said costs was not deposited, in this concern. cost was offered in court but counsel for defendant refused to accept it. (See the statements dated 17/04/86 of the counsels of both the parties in lower court file).

Hon’ble Supreme court of India also in Ravinder Kaur Gerewal Versus Manjit Kaur, held in para 59 of its judgement that person who has perfected title by way of adverse possession can file suit for obtaining injunction protecting possession and for recovering of possession in case of dispossession . Para 59 of the judgement is as under :-

“59. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion

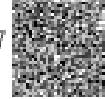


consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessor suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly any other person who might have dispossessed the plaintiff having perfected title by way adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit."

Similar view has been followed by S C and various high in a no. of Judgement.

In the present case, Plaintiff without permission of defendants, has continuous, open and uninterrupted possession and get ownership by way of adverse possession, Originally Since the time when their fore-fathers started cultivating this suit land and thereafter since dated 22-11-69, when plaintiff has challenge the title of defendants."

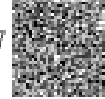
8. In this case, the possession of the plaintiff is proved because they have produced revenue record from the year 1936-1937 to prove their possession. A bare look at the jamabandies (revenue record) proves that they are recorded as, in possession of the property as a *gair marusi*, however, in the column of rent, there is no corresponding entry. Consequently, they are not tenants. The predecessor of the plaintiffs is reflected as an owner being a blacksmith. This entry proves that the predecessor of the plaintiffs are in



possession of the property under some arrangement. However, his possession was permissive. Both the Courts have erred in recording that the entry in the revenue record is '*Bashra Malkan*' and therefore, it is adverse possession. As per dictionary of revenue terms published by Sh. Gurdial Singh Jaswal, Advocate, it is evident that the revenue record as '*Bashra Malkan*' denotes that the persons are in possession through the owners.

9. However, there is a significant development. On 22.11.1969, the entry in favour of the plaintiffs changes to '*Bashra Malkan Billa Malkana*'. This is the revenue term. The exact meaning of the aforesaid terms is not available in the dictionary, however, if we go by literal meaning, it means that the occupants are in possession under some arrangement but they are not paying any rent or land revenue.

10. On 15.12.1969, the plaintiffs filed similar suit for declaration, which was permitted to be withdrawn by the Court with liberty to file a fresh one on payment of costs of Rs.30/-. A bare perusal of the order passed by the Court on 11.11.1971, which is exhibited on the record, it becomes evident that the defendants were represented and they have opposed the application filed by the plaintiffs to withdraw the suit with permission to file a fresh one. Ex.P-3 is the order dated 11.11.1971, passed by Sub-Judge, Ist Class, Narwana. The present suit was filed on 09.10.1985. In the year 1969, the plaintiffs declared that they are claiming to be in adverse possession of the property. In the year 1971, the suit was withdrawn. Still, the defendants did not take any step to take possession of the property for a period of more than 12 years from 11.11.1971, when the plaintiffs previous suit was dismissed as withdrawn. Even it is assumed that the plaintiffs possession was permissive in lieu of service rendered by them as blacksmith, however, in

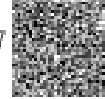


the year 1969, the plaintiffs openly declared that they were asserting their title as adverse possession. The defendants were party to the aforesaid suit. Even after having knowledge that the plaintiffs are declaring themselves to be in adverse possession, the defendants did not take steps. As per Article 65 of the Limitation Act, 1963, the period for seeking possession on the basis of ownership/title is 12 years from the date, when the possession of the defendant becomes adverse to the plaintiff. During this 12 years from the year 1971, the defendants did not take steps.

11. The trial Court's judgment declaring that the plaintiffs' suit was filed beyond the prescribed period of limitation was erroneous because in such suit, fresh cause of action accrued in favour of the plaintiffs after a period of 12 years from the year 1971. In November, 1983, they were entitled to file a fresh suit.

12. The learned counsel representing the appellant has relied upon the judgments passed by the Supreme Court in **Hemaji Waghaji Jat's case (supra)**. In this judgment, the Supreme Court held that no adverse possession ousts an owner on the basis of inaction within limitation, however, the legislature is required to have a re-look. It has been held that the possession must be peaceful, open, continuous, actual & visible. In this case the plaintiffs fulfil all the parameters particularly with effect from 1969, when they filed the suit. Even if the period during which the previous suit remained pending, is excluded, still, the plaintiffs perfected their title.

13. In **Vidya Devi's case (supra)**, the Supreme Court held that co-bhumidars are not entitled to claim adverse possession because they are joint owners. The Supreme Court further held that there is no period of limitation



fixed for filing a suit for partition by co-bhumidars against other co-bhumidars in respect of joint holding.

14. The next judgment relied upon by the learned counsel representing the appellant is **Karnataka Board of Wakf's case (supra)**. In this case, the Court was examining the suit filed by Government of India seeking declaration that notification issued by Karnataka Board of Wakf is illegal and Government of India has become owner by adverse possession. In that context, the Supreme Court held that there should be evidence to prove that hostile title in denial of title is necessary to be proved. In this case, all the three judgments are not applicable because the plaintiffs openly declared their hostile possession by filing the previous suit.

15. In **Karnataka Board of Wakf's case (supra)**, the Supreme Court examined the concept of existing wakf property on the date of commencement of the Waqf Act, 1954. In that case, ancient protected monument was in existence. In that context, the Supreme Court examined the issue of adverse possession. Hence, the aforesaid judgment is not applicable to the facts of a present case.

16. Similarly, the judgment passed in **Hemaji Waghaji Jat's case (supra)**, is also in the peculiar facts of that case. On careful reading of judgment, it is evident that the injunction suit was filed, but the plaintiffs neither pleaded nor any issue on adverse possession was framed. In that context, the Supreme Court made certain observations with regard to adverse possession.

17. Similarly, in **Annasaheb Bapusaheb Patil's case (supra)**, the Supreme Court while examining the impartable estate, which was governed by rule of *primogeniture* was being examined. The Court held that where the



property is Joint Hindu Family property and the possession of one member is treated as possession of all the members. Hence, no adverse possession. Thus all the three judgments with greatest respect are not applicable to the facts of the present case.

- 18. Consequently, finding no merit, the appeal is dismissed.
- 19. All the pending miscellaneous applications, if any, are also disposed of.

May 29th, 2024 (ANIL KSHETARPAL)
Ay JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No