

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2346 of 1994 (O&M)
Reserved on:07.03.2024
Date of Order:15.03.2024

Roop Chand(Deceased) through LRs .Appellant
Versus

Kirpal Singh and others ..Respondents
RSA No.2489 of 1994(O&M)

Kirpal Singh .Appellant
Versus

Roop Chand(Deceased) through Lrs and others ..Respondents
RSA No.2396 of 1994(O&M)

Roop Chand(Deceased) through LRs .Appellant
Versus

Kirpal Singh ..Respondent
RSA No.2774 of 1994(O&M)

Roop Chand(Deceased) through LRs .Appellant
Versus

Kirpal Singh and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.S.Rangi, Advocate, for the appellant(s)

Mr. Gurmeet Singh Saini, Advocate, for
Mr. S.C.Chhabra, Advocate
for the appellant (in RSA-2489-1994)
for the respondent (in other cases)

ANIL KSHETARPAL, J

1. With the consent of the learned counsel representing the parties,

a batch of four connected regular second appeals filed against a common

judgment passed by the First Appellate Court while deciding as many as five connected appeals shall stand disposed of by this order.

2. RSA No.2346, 2774 and 2396 of 1994 have been filed by Sh. Roop Chand, whereas RSA No.2489 of 1994 has been filed by Sh. Kirpal Singh.

3. In order to comprehend the issues involved in these cases, the relevant facts, in brief, are required to be noticed.

4. Sh. Kirpal Singh filed a suit against Sh. Shera Ram, Sh. Roop Chand etc. for grant of decree of declaration that he has become owner of 61 kanals and 6 marlas by way of adverse possession as he took wrongful possession of the property in the year 1950 and he has been in open, continuous and hostile possession till date. It was asserted that Sh. Wasan Singh, the Kirpal Singh's father, was allotted this land in lieu of the land left by him in Pakistan and Sh. Kirpal Singh and his brother Sh. Dogar Singh cultivated the land. Subsequently, Sh. Shera Ram was allotted the land but he never came to India. Sh. Shera Ram died in Pakistan on 30.11.1986. Sh. Dogar Singh, his brother, shifted to Karnal in the year 1960. He has been in adverse in an open and hostile possession of the property measuring 61 kanals and 6 marlas along with share in the wells located in khasra no.1M//26, 5M//27, 7M//26.

5. On the request of the plaintiff, the name of Sh. Shera Ram was deleted from the array of parties vide order dated 22.12.1989. Sh. Kirpal Singh while filing the written statement submitted that Sh. Shera Ram died on 09.12.1988 and before his death he executed a Will dated 15.08.1988 in his favour. Defendant no.4-Bikar Singh has purchased land measuring 46 kanals and 16 marlas from Sh. Shera Ram vide registered sale deed dated

22.10.1981.

6. In the second suit, Sh. Bikkar Singh claimed decree for possession with respect to land measuring 46 kanals and 14 marlas which he has allegedly purchased from Sh. Shera Ram through Sh. Roop Chand. The third suit was filed by Sh. Roop Chand against Sh. Kirpal Singh seeking possession of 14 kanals and 2 marlas land.

7. Both the courts have held that in fact Sh. Shera Ram never came to India from the area which now forms part of the Pakistan. In fact, Sh. Roop Chand has been wrongly projecting that Sh. Shera Ram resides with him and he has executed Will in his favour. The Courts have also held that the sale deed in favour of Sh. Bikar Singh with respect to land measuring 46 kanals and 14 marlas would not confer any right. Sh. Kirpal Singh is not proved to have perfected his title by way of adverse possession and he is in illegal possession.

8. However, the trial court held that Sh. Kirpal Singh is tenant in possession of the property and he can be evicted in due course of law. The court also declared that the property has escheated in favour of the State of Punjab as Sh. Shera Ram died issueless in Pakistan on 30.11.1986.

9. As already noticed as many as five first appeals were filed. On re-appreciation of the evidence, the First Appellate Court has held that Sh. Kirpal Singh is not proved to be tenant and therefore, he is in illegal possession. With the aforesaid modification, the First Appellate Court affirmed the judgment of the trial Court.

10. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the digital scanned record of the courts below.

11. The learned counsel representing Sh. Roop Chand contends that the suit filed by Sh. Kirpal Singh was bad for non-joinder of parties because the name of Sh. Shera Ram was deleted from the array of parties vide order dated 22.12.1989. For claiming declaration on the basis of adverse possession, the person is required to admit ownership of the true owner. Sh. Kirpal Singh denies the allotment in favour of Sh. Shera Ram. He submits that Sh. Kirpal Singh is not entitled to decree of declaration that he has become owner by way of adverse possession. He has also contended that the certificate of death showing that Sh. Shera Ram died in Pakistan on 30.11.1986 has not been proved and Sh. Kirpal Singh has no locus to challenge the correctness of Will particularly when two attesting witnesses have already been examined to prove the will in accordance with Section 68 of the Indian Evidence Act, 1872.

12. Per contra, the learned counsel representing Sh. Kirpal Singh has submitted that Sh. Kirpal Singh has become owner by adverse possession because he is in possession of the property from the year 1950 and he has been in open and hostile possession till date.

13. This court has considered the submissions of the learned counsel representing the parties, analysed and evaluated the arguments of the learned counsel representing the parties.

14. From careful reading of the record, it is evident that Sh. Roop Chand entered into two agreements to sell, first in favour of Sh. Kashmir Singh and Sh. Amrik Singh and the second in favour of Sh. Shabeek Singh, brother of Sh. Kirpal Singh. Subsequently, Sh. Roop Chand promised to produce Sh. Shera Ram for execution of the sale deeds, however, he failed.

Hence, two suits were filed for recovery of the earnest money against Sh.

Roop Chand. Sub Judge Ist Class held that Sh. Roop Chand fabricated the Power of Attorney allegedly executed by Sh. Shera Ram. Sh. Assa Singh has wrongfully misrepresented himself as Sh. Shera Ram. These facts were asserted by the plaintiff-Kirpal Singh while filing the suit. The defendant while replying stated that Sh. Shera Ram was not party to the aforesaid suit, hence, the aforesaid finding is not binding upon Sh. Shera Ram. However, it may be noted here that Sh. Roop Chand was party to the aforesaid suit, hence, it is binding on him. Moreover, Sh. Roop Chand filed the first appeal. During the pendency of the first appeal, he agreed to refund the amount hence a consent order was passed which is Ex.D13 on the trial court record. Thus the finding of the Sub Judge Sh. N.S.Mudra, was never reversed. Moreover, it is also the case of Sh. Kirpal Singh that Sh. Assa Singh while misrepresenting himself as Sh. Shera Ram filed a petition under Section 14-A (ii) of the Punjab Security of Land Tenures Act, seeking eviction of Sh. Kirpal Singh from land measuring 14 kanals. On 31.12.1978, the Assistant Collector Ist Grade dismissed the application on the ground that Sh. Shera Ram never filed this application and that Sh. Assa Singh has wrongfully misrepresented himself as Sh. Shera Ram. The appeal as well as revision petition filed against the order of the Assistant Collector were dismissed. This fact is also not disputed by Sh. Roop Chand while filing the written statement.

15. In view of the aforesaid position, it is evident that Sh. Shera Ram was impleaded as party, however, his name was deleted as he never came to India from the area of Pakistan. He died in Pakistan on 30.11.1986. This fact is established from Ex.D14 which reveals that in the jamabandi which was received by the Rehabilitation Department, Jalandhar, from

Pakistan shows that Sh. Shera Ram son of Sh. Ghashitu, caste Scheduled Caste was owner of the property. The certificate of his death attested by the High Commission of India in Pakistan has been produced which proves that Sh. Shera Ram died on 30.11.1986, at the age of 90. Still further, it has come on record that originally Sh. Kirpal Singh entered into possession as tenant and he has been paying Batai to Sh. Roop Chand. Hence, he cannot claim adverse possession. He has been in litigation for quite some time.

16. The next argument of the learned counsel has no substance because the certificate Ex.P6, has been issued, attested and counter signed by the High Commission of India in Pakistan. Sh. Roop Chand has not led any evidence to controvert that fact. Sh. Roop Chand has claimed the property left behind by Sh. Shera Ram on the basis of Will. Both the courts have recorded the following reasons to discard the Will.

- (1) Sh. Roop Chand used to attend the proceedings of the Court in this suit, however, he did not step into the witness box to stand cross-examination on vital points. Hence, adverse inference was drawn.
- (2) Though, Sh. Roop Chand claims that Sh. Shera Ram was residing with him. But Sh. Roop Chand has failed to produce on record any ration card or voter list to show that Sh. Shera Ram was residing with him.
- (3) Sh. Roop Chand claims that Sh. Shera Ram died in December, 1986, whereas the death certificate was issued on 01.06.1986. Thus, the court found it suspicious.
- (4) Both the courts have also held that Sh. Roop Chand was a Brahmin and Sh. Shera Ram was a Scheduled Caste.

There is no evidence that from 1947, he resided with the family of Sh. Roop Chand. Moreover, there was finding by the civil court as well as the revenue authority to prove that Sh. Shera Ram never came to India and it was Sh. Roop Chand, who was manipulating the things.

17. The learned counsel representing Sh. Roop Chand is not correct in contending that Sh. Kirpal Singh has no right to contest the Will. It may be noted here that in the facts and circumstances of the present case, the court was required to examine whether an attempt is being made to usurp the property.

18. Keeping in view the aforesaid discussion, all the four appeals are dismissed with observation that the property has escheated in favour of the State of Punjab. A copy of the judgment be forwarded to the Chief Secretary, Punjab, who is expected to take steps to get the possession of the property from unauthorised occupants.

19. With these observations, all the appeals are dismissed.

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

15th March, 2024
nt

(ANIL KSHETARPAL)
JUDGE

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