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

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Reserved on 18.4.2024Date of Decision : **April 30, 2024**

Amrit Kaur and others

.....Appellants

VERSUS

Bant Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. M.S.Joshi, Advocate
for the appellants.

Mr. Sushane Puri, Advocate and
Mr. K.G.Chaudhary, Advocate for the respondents.

KULDEEP TIWARI, J.

1. This is regular second appeal filed by the plaintiffs. Both the parties hereinafter referred to with their respective status before the learned lower Court concerned. It is a decree of reversal.

2. The plaintiffs filed a suit for possession of the suit land with the allegations that they are owners in equal shares of 1/6th share of the suit land. Previously, Bhagwan Singh, husband of plaintiff No.1 and father of plaintiffs No.2 and 3 was in possession of the the suit land. It was further pleaded that taking undue advantage of the absence of the plaintiffs, the defendants, who have their land adjacent to the plaintiffs' land, have encroached upon some portion of the land of the plaintiffs.

After having doubt about the illegal encroachment made by the

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defendants, a demarcation was carried out on 12.11.1984 and it was found that out of *khasra No.288/2*, an area of (1-0) and in *khasra No. 389* an area of (0-16) has been found in illegal possession of the defendants No.1 to 3 and out of *khasra No.405/2*, an area of (0-18) is in illegal possession of defendant No.4.

3. Upon notice, the defendants filed the written statement denying the pleadings of the plaintiffs and pleaded that they are in possession of their land and they have not encroached upon the land of the plaintiffs. The defendants further raised the issue of correctness of the demarcation report and apart from that an additional plea was also taken regarding the maintainability of the suit in the present form and in the alternate, they have set up a plea of adverse possession.

4. Upon replication filed by the plaintiffs, the learned lower Court concerned framed the following issues:-

- “1. *Whether the plaintiffs are owners in equal share of 1/6th share in the land mentioned in para No.2 of the plaint?OPP.*
2. *Whether the defendants have encroached upon the land in suit?OPP.*
3. *Whether the suit is not maintainable?OPD.*
4. *Whether the suit property is not properly specified? IF so its effect?OPD.*
5. *If issue No.2 is proved whether the defendants have become owners by way of adverse possession?OPD.*
6. *Whether the suit is within time?OPD.*
7. *Whether the suit is properly valued for the*



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purposes of court fee and jurisdiction?OPP.

8. *Whether defendant No.4 is entitled to special costs U/S 35-A C.P.C.?OPD.*
9. *Relief.”*

5. Before this Court proceeds to mention the facts further, it is relevant to note here that the suit was earlier dismissed, however, in the appeal preferred by the plaintiffs, the *lis* was remanded back to the learned lower Court concerned to decide afresh after getting demarcation of land conducted by appointing a Local Commissioner to the rank of Naib Tehsildar. Thereupon, the demarcation was conducted and the defendants were found in illegal possession of the land belonging to the plaintiffs.

6. The learned lower Court concerned has decided issues No. 1 to 7 in favour of the plaintiffs and issue No.8 was not pressed by the defendants and, therefore, decided in favour of the plaintiffs and decreed the suit vide judgment dated 24.8.1988.

7. Having aggrieved with the judgment and decree (*supra*), the defendants filed the first statutory appeal. The learned Appellate Court concerned though maintained the findings on issues No.1 to 3 in favour of the plaintiffs, however, decided issue No.4 in favour of the defendants and declared them as owners by way of adverse possession of the portion of the land belonging to the plaintiffs upon which they have encroached upon. This caused grievance to the plaintiffs and they filed the present regular second appeal.

**RSA-2520-1991****-4-****SUBMISSIONS BY THE LEARNED COUNSEL FOR THE APPELLANTS**

8. Learned counsel for the appellants-plaintiffs would submit that the findings on issues No. 5 and 6, which were decided against them by the learned First Appellate Court, are infact perverse and, therefore, liable to be set-aside. He further submits that once issues No.1 and 2 have been decided in favour of the plaintiffs then there was no occasion for the First Appellate Court to decide issues No.5 and 6 against the plaintiffs. He further submits that the findings of the First Appellate Court are beyond the pleadings as it was not the case of the defendants that their possession over the suit land has become perfect by virtue of adverse possession as they have never claimed that their possession was open, hostile and with the knowledge of the world at large. He further submits that infact the defendants specifically pleaded that they have never encroached upon the land of the plaintiffs and they are in possession of the land being owners.

SUBMISSIONS BY THE LEARNED COUNSEL FOR THE RESPONDENTS-DEFENDANTS

9. Learned counsel for the respondents-defendants would submit that the learned First Appellate Court has rightly observed that the possession of the defendants upon the land is from the days of consolidation i.e. 30-31 years ago and in between the land of the plaintiffs and defendants, there is a pahi (rasta) and this rasta was in existence since consolidation proceeding, which was completed about 30 years back. He further submits that once the possession of the defendants

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was proved from the last 30 years, therefore, even though they are possessing the land believing it to be their own and their title has become perfect by way of adverse possession. In this regard, he has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Kshitish Chandra Bose Vs. Commissioner of Ranchi, Civil Appeal No. 1034 of 1971, decided on 6.2.1981**. The relevant extract of the same reads as under:-

“8. It was then observed by the High Court that mere sporadic acts of possession exercised from time to time would not be sufficient for the acquisition of title by adverse possession. As discussed above, the High Court has not at all cared even to go through the evidence regarding the nature of the acts said to have been committed by the appellant nor to find out whether they were merely sporadic or incidental. Another reason given by the High Court was that the adverse possession should have been effective and adequate in continuity and in publicity. Here, the High Court has gone wrong on a point of law. All that the law requires is that the possession must be open and without any attempt at concealment. It is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner. Such a requirement may be insisted on where an ouster of title is pleaded but that is not the case here. The findings, however, clearly show that the possession of the plaintiff was hostile to the full knowledge of the municipality. In this connection we might extract below the well considered findings recorded by the trial court and Additional Judicial Commissioner both on the question of title and that of adverse possession.

**RSA-2520-1991****-6-****Analysis**

10. Before giving any finding on the legality of the judgment and decree passed by the learned First Appellate Court, let us have a glimpse on the aggravated facts, which are essential for the adjudication.

11. Vide judgment and decree dated 24.08.1988, the learned lower Court concerned, has decreed the suit of the plaintiffs, in toto and the following relief was granted:-

I, therefore, decree the suit of the plaintiff for possession of land measuring 8 Biswas out of Kh. Nos. 388/2, 6 Biswas out of Kh. No. 389/2 towards side and out of Kh. Nos. 405/2, 2 Biswas towards East and West and 8 Biswas out of Kh. No. 388/2 in the middle and 6 EXKKX Biswas out of Kh. No. 389/2 in the Middle and 7 Biswas out of Kh. No. 389/2 in the Middle which the under gair mumkin pahi total area 2 Bighas 2 Biswas situated in Village Ghaniwal, against the defendants which is encroached by them and belonged to plaintiffs as per report of Local Commissioner Ex.PX and site plan E.P1/1.

12. Thereupon, the statutory appeal preferred by the defendants, the learned First Appellate Court concerned, has modified the relief, and finds that the possession of the appellants on certain piece of land, on account of adverse possession has become perfect, and finally accepted the appeal and granted the following relief to the defendants:-

"Resultantly the present appeal is accepted and the judgment and decree of the trial court is set aside, and the suit of the plaintiffs-respondents is dismissed against the appellants, but it shall remain decreed to the effect that the



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plaintiffs shall be entitled to possession of Khasra No. 405/2 (North-East), measuring 8 Bigha 5 Biswa which had been encroached upon by Hamir Chand, respondent No.4 against whom the judgment and decree of the trial court has become final, and that the appellants have no right or title or interest to any portion of land of Khasra No.388/2, 282/2 and 405/2, which is to the south of existing pahi, as found by the learned local Commissioner in his report Ex.PX/1.

13. In view of the above, now the only dispute is with regard to the land, which was declared to be perfect, by virtue of adverse possession in favour of the defendants.

14. The admitted fact is that, it is not under dispute that the report of the Local Commissioner Ex PX/1, which find the encroachment of all the defendants, as under:-

<i>Sr. No.</i>	<i>Khasra No.</i>	<i>Field Book</i>	<i>Area</i>
1.	389/2(North)	(3-3-39-39)	0-6 88
2.	388/2 (North)	(3-3-50-50)	0-8 88
3.	405/2(North-West)	(3-3-12-12)	0-2 88

These encroachments are said to have been effected by the appellants Bant Singh etc.

4.	405/2 (North-East)	(3-3-34-34)	0-5 88
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this encroachment is said to have been made by Hamir Chand, respondent.

5.	389/2 (Middle)	(3-3-50-50)	0-8
6.	389/2 (Middle)	(3-3-40-39)	0-6
7.	405/2 (Middle)	(3-3-46)	0-7

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these encroachments are said to have been made in the shape of Gair Mumkin Pathi.

15. The learned First Appellate Court concerned has considered that since in the North of the pahi (rasta), which is encroached upon by the defendants, is by virtue of adverse possession, the defendants-Bant Singh, Amrik Singh, and Balbir Singh became owner by virtue of adverse possession. To reach this finding, the learned First Appellate Court concerned has observed that since the pahi was in existence, since the days of consolidation, therefore, it can be presumed that on the North of the pahi (rasta), the land which belongs to the plaintiffs was in fact, under the possession of the above defendants, therefore, their possession can be presumed from the days of consolidation, which admittedly carried out 30 years back.

16. This Court is unable to accept the observation of the learned First Appellate Court concerned, as these observations are purely against the basic principle of adverse possession. Mere possession may be long without claim of right is not sufficient to establish that it is adverse to the true owner. Possession must be hostile, express, or implied in the denying of the title of the true owner. It is true that the defendants are in the possession of the land in question, but the possession cannot be converted into adverse possession by efflux of time. There can be no adverse possession with the person claiming that he does not know that he was occupying somebody's land. He must possess hostile, express for using the property adversely against another, having an interest in it. In



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the instant case, it was not the plea of the defendants, that they knew prior to the demarcation, that the land which they are utilizing belonged to the plaintiffs, therefore, their possession over the land cannot be perfect, by virtue of adverse possession. Secondly, the actual date of possession is neither pleaded, nor proved on record, which is the essential ingredient to the plea, and thereupon proved by way of adducing evidence, whereas, the learned First Appellate Court concerned, has presumed the existence of possession from the last 30 years, which is not permissible under law. The facts which are required to be proved by way of evidence cannot be presumed by the Court, that too, without any supporting evidence.

17. In view of the above findings, this Court finds merit in the instant regular second appeal, therefore, an intervention is required to the judgment passed by the learned First Appellate Court concerned.

18. In summa, the present regular second appeal succeeds and the judgment and decree dated 31.10.1991 passed by the learned First Appellate Court concerned, is hereby **set aside**, whereas, the judgment and decree dated 24.8.1988 passed by the learned lower Court concerned, is ordered to be **maintained**.

April 30, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No