

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-772-1994 (O&M)
Reserved on: 21.03.2024
Date of decision:03.04.2024

Sukhmandar Singh and others
....Appellants

Versus

Smt. Jangir Kaur and others
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Parvinder Singh, Advocate for the appellants

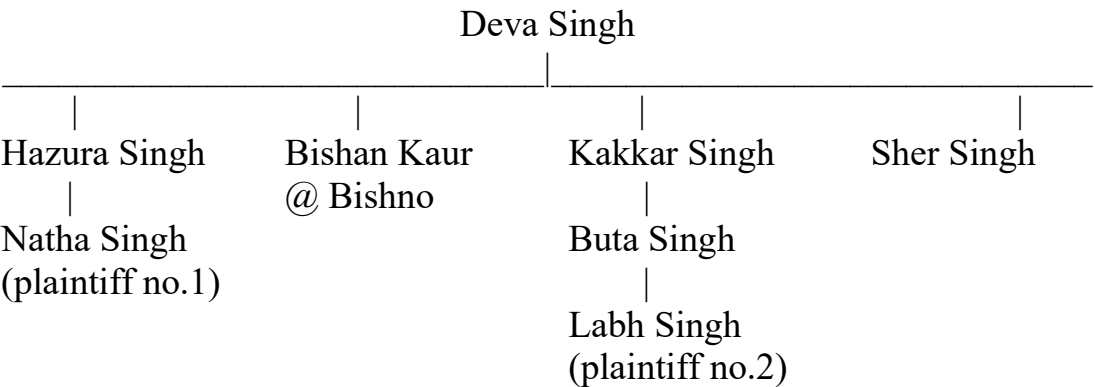
Mr. A.D.S.Jattana, Advocate for the respondents

ANIL KSHETARPAL, J

1. Brief facts of the case:-

1.1 This is the plaintiff’s second appeal against the concurrent judgments passed by the courts below while dismissing their suit for the grant of decree of possession with respect to land measuring 177 kanals 15 marlas.

1.2 In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed, alongwith the following family tree is required to be noticed:-



1.3 Smt.Bishno alias Bishan Kaur was owner of the property. Sh.Natha Singh and Sh.Labh Singh, the plaintiffs, filed a suit for the grant of decree of declaration that in a family settlement the property has fallen into their share against Smt. Bishno. She conceded to the claim of the plaintiffs resulting in judgment and decree dated 23.05.1985. However, the court passed the following brief order, the operative part whereof reads as under:-

“Heard. A collusive decree passed. No costs.

Decree-sheet be prepared and file be consigned.”

1.4 Sh.Sukhdev and Smt. Jangir Kaur filed a civil suit no.471 dated 13.08.1985 for the grant of decree of permanent injunction against Sh.Natha Singh, Sh.Labh Singh and Smt. Bishno. In that suit, the plaintiffs claim themselves to be in possession of the suit land as tenants under Smt. Bishno. Defendants no. 1 to 3 contested the suit claiming that the plaintiffs in that suit were not in possession and previously defendant no.3 Smt. Bishno was the owner and now defendants no. 1 and 2 are owners thereof. It was alleged that even if the land was given on lease for a particular year, after expiry of the period, the plaintiffs could not claim to be in possession as lessees. In that suit, the following issues were settled by the trial court:-

“1) Whether the plaintiffs are in possession of the suit land under defendant No.3, if so its effect? OPP.

2) Whether the plaintiffs are entitled for injunction prayed for? OPP.

3) Whether the plaintiffs have no locus standi to file the suit? OPD.

4) Whether the plaintiffs have no cause of action? OPD.

5) Whether the suit is maintainable in the present form? OPD.

6) *Whether the defendants are in possession of the suit land as owner? OPD.*

7) *Relief.”*

1.5 The trial court held that from the perusal of the Jamabandis, it is proved that the plaintiffs are in possession as lessees. The court also found there is an entry in the revenue record to the effect that defendant no.1 and 2 namely Sh.Natha Singh and Sh.Labh Singh have become the owners. Ultimately, the court held that the plaintiffs are in possession of the suit land but no more under Smt. Bishno. Thus, the plaintiffs' suit was decreed and the defendants were restrained from dispossessing the plaintiffs from the suit land otherwise than in due course of law. Thereafter on 16.07.1987 Sh.Natha Singh and Sh.Labh Singh filed a suit for possession with respect to land measuring 177 kanals 15 marlas. Smt. Jangir Kaur alias Jagir Kaur filed civil suit no. 120 of 1988 to challenge the correctness of the judgment and decree passed on 23.05.1985, however, the same was withdrawn on 25.08.1989. The plaintiffs suit for possession was dismissed by the trial court, which in appeal has been affirmed by the appellate court.

2. Arguments adduced:-

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook, alongwith the requisitioned record.

2.2 Learned counsel representing the appellants has filed synopsis of the case, which reads as under:-

“The Decree dated 23.05.1985 (Ex.A2, pg 88 LCR) is valid as per the following averments:-

> The decree has been pleaded in para 2 at backside of pg. No.8 LCR, though the Defendants denied it but no counter claim has been filed to challenge decree.

> The Defendant No.3 filed suit to challenge the said decree (Ex.P8, pg. 60 LCR) I.e Civil Suit no.120 of 20.03.1988 which was withdrawn without any liberty on 25.08.1989 (Ex.P7, pg. 59 LCR) Thus, the defendants are now precluded from challenging the said decree.

>The findings of the court below that the judgment and decree dated 23.05.1985 (Ex.A2, pg. 88 LCR) is no judgment and decree in the eyes of law, are illegal and perverse. For the following reasons:

* That the said decree is not under challenge in the present suit by the Defendants by filing any counter claim etc.

*That there is no such ground taken in the Written Statement by the Defendants that the judgment & decree is bad for compliance of Order 20 CPC.

*That during her lifetime Bishno (the original owner of the property) never challenged it, rather she affirmed it while being Defendant No. 3 in suit for permanent injunction.

*That the court has given perverse findings that the description of the property is not given in the decree, rather the description has been given in the decree dated 23.05.1985 (Ex.A2, pg. 88 LCR).

*That the decree dated 23.05.1985 (Ex.A2, pg. 88 LCR) clearly pertains to suit property and moreover it is not the case of the defendants that the said decree is not with respect to the suit property.

*That though at the risk of repetition it is humbly submitted that the decree dated 23.05.1985 is absolutely legal and valid, and as such there is no

irregularity. However it is humbly submitted that the Plaintiff or the Defendant have no role in dictating the contents of the judgment or decree, which is the prerogative of the Learned Trial Court, therefore, if this Hon'ble Court considers that there is some irregularity in the judgment & decree dated 23.05.1985 (supra), then the plaintiff cannot be punished for the same.

The findings with respect to adverse possession are illegal and perverse

>A perusal of written statement would reveal that nowhere word "Adverse" is even mentioned (Pg. 10 LCR). Further, the essential ingredients qua the plea of adverse possession are not there in the pleadings. The Defendants have not stated anything as to when they entered into possession and whether their possession was open, hostile and was within the knowledge of the original owner. The date from which the possession became adverse is also not mentioned.

>That on perusal of the Jamabandi for the year 1977-78 i.e. Ex. A7 (Pg. 78-79 LCR) would reveal that the possession of defendant No.1 & 2 is shown as "Gair Marus!" and in column No.9 the entry "Gair Marusi Chakotedar" is mentioned. Thus, even as per the revenue record as the Defendants Chakotedars/Tenant of the earlier owner.

> That the Defendants No. 1 to 3 had earlier filed a Civil Suit No. 471 dated 13.08.1985 decided on 01.06.1987 against the present Plaintiffs and the original owner of the property (i.e. Bishno). The said suit was for permanent injunction wherein the present Defendants claimed to be tenants under Bishno. In the said suit the present Plaintiffs appeared and pleaded that now they are owners of the suit property.

> The said civil suit was decided vide judgment & decree dated 01.06.1987 (Ex.P-2 Pg. 38 LCR), wherein it was observed in para No. 8 of the said judgment that the Defendants (who were Plaintiffs in the said suit), are recorded to be in possession of the suit land as "Chakotedars". Moreover there was a finding that now the present Plaintiffs (who were defendant No.1 & 2 in the said suit), have become owner of the property. The Court also observed that Revenue record shows the Plaintiffs therein to be "Chakotedars". However, it was observed as under:

"Since the plaintiffs did not take the suit land on lease or chakota from Defendants No.1 & 2, they shall be taken to be in possession of the suit land as unauthorized occupants".

It was under these circumstances that the Court held that the Plaintiffs therein i.e. Defendant No. 1 to 3 in the present suit cannot be termed as "Tenants". However, the Court decreed the said suit to the extent that the Plaintiffs therein cannot be dispossessed without following the due process of law. Resultantly the present suit was instituted on 16.07.1987.

>That it is settled law that once a tenant is always a tenant and once the possession of the Defendants No.1 to 3 was permissive the same can never mature into adverse possession.

>That none of the witnesses of the Defendants i.e. DW1 to DW5 (Pg. 27 to 29 LCR), have stated anything regarding ingredients of adverse possession in their examination in chief. Thus, even in evidence the Defendants have not tried to prove the plea of adverse possession.

>That DW3 Jora Singh in his cross examination (Pg. 27 backside LCR), has stated:-

"Smt. Jangir Kaur alleged that we are the tenants on the land. She said that we are the owners of the land'.

>DW4 Gurdev Singh (Pg. 27 LCR), has further admitted:-

"it is correct that Smt. Jangir & Gurdev Singh filed suit against Bishno, Sh.Natha and Lal Singh for permanent injunction on the allegation that they are in possession of the suit land as Tenand and they should not be dispossessed from the suit land".

>Similarly DW5 Smt. Jangir Kaur (Pg. 29 LCR), has admitted:-

"I do not know in which capacity we were in possession of the suit land".

Thus, the findings of the learned trial courts below regarding the plea of adverse possession are absolutely illegal and against law.

The relationship of the plaintiffs with Bishno not disputed.

>The original owner Bishno was sister of the father of the plaintiffs Sh.Natha Singh. The said fact has been admitted by DW3 Jora Singh (Page 27, LCR). Moreover, the plaintiffs had proved on record the voter list of Village Pakka Kalan as (Ex.P5, Page 47 LCR) and the ration card as (Ex.P6, Page 58 LCR). Moreover, even in examination-in-chief the plaintiff Sh.Natha Singh has deposed that Bishno was his father's sister (Page 19 LCR).

The alleged WILL allegedly dated 15.06.1974 not pressed

> The Defendant No.3 alleged one WILL allegedly dated 15.06.1974 in her favour by Bishno.

> The said WILL however was not pressed before the Learned Trial Court as is apparent from Pg. 21 Para 23 PB, and the issue of the said WILL was also

decided against the Defendant No.3 i.e. issue No. 10B (Pg. 22 Para 27 PB).”

2.3 On the other hand, learned counsel representing the respondents submitted that the decree passed on 23.05.1985 is not a speaking order and hence, not a decree in the eyes of law. He further submits that the defendants have perfected their title by way of adverse possession because the plaintiffs were held to be unauthorized occupants on 01.06.1987.

3. Discussion:-

3.1 This Court has considered the submissions made by the learned counsel representing the parties.

3.2 Upon careful study, the following reasons have been recorded by the First Appellate Court:-

- i) The judgment passed on 23.05.1985 shows non-application of mind.
- ii) A judgment of the court should contain a concise statement of facts, points for determination and decision thereon alongwith reasons for such decision. However, the judgment dated 23.05.1985 fails to fulfill the aforesaid requirement.
- iii) The judgment must contain the number of the suit, names and description of the parties alongwith their addresses and particulars of the claim and the relief granted. However, the decree has not been drawn in accordance with law and the rules.

- iv) In the body of the decree, it is nowhere mentioned with regard to details of the land
- v) The plaintiffs have not placed on record copy of the plaint and written statement filed by Smt. Bishno in the suit filed in the year 1985 and it is impossible to connect the suit land with the decree passed in the year 1985.
- vi) It is not the function of the court to presume that the decree dated 25.03.1985 pertains to the suit land.
- vii) In the absence of the specific pleadings, it is not appropriate to accept the plaintiffs' case that they are heirs of Smt. Bishno.
- viii) The defendants are in possession of the land for over 12 years which has not been denied and therefore, they have become owner by way of adverse possession.

3.3 The First Appellate court's reason no.1 overlooks Order XII Rule 6 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') which enables passing of judgments on the basis of admissions in the pleadings or otherwise at any stage of the suit. Basically, this is an enabling provision to dispose of the suit partially or absolutely in an expeditious manner. Once the court comes to a conclusion that the parties to the suit are not at issue or in other words, there is no dispute of facts between the parties which require adjudication, then the court can proceed to pass the judgment on the basis of admissions of fact. These admissions of fact can be made either in the pleadings or otherwise. Such judgment can be passed, at any stage, either on the application of

any party or on its own motion. Even disposal of a part of the suit is permissible under this order. In that context, the definition of judgment based upon admissions is required to be examined. The expression judgment has been defined in Section 2(9) CPC which means the statement given by the Judge on the grounds of a decree or order. Once the court comes to a conclusion that the judgment is required to be passed in accordance with Order XII Rule 6 CPC, recording of detailed reasons for arriving at such conclusion is not mandatory, though is ideally required. However, in the subsequent proceedings, the court is not expected to ignore a judgment on the ground of a technical reason, which is not mandatory. If we dissect the definition of the expression ‘judgment’ it means the statement given by a Judge on the grounds of a decree. In a consent decree passed under Order XII Rule 6 CPC, the court is required to make only a statement to the effect that the parties are not at issue. That can be expressed by giving a concise form, which does not necessarily requires detailed reasons by the Judge.

3.4 Undoubtedly, the Presiding Officer, while passing the decree dated 23.05.1985, has used the expression collusive decree, however, in substance, this was a consent decree passed under Order XII Rule 6 CPC. The expression collusive involves secret and unlawful cooperation aimed at deceiving or giving an advantage over others. Hence, it was not appropriate for the Presiding Judge to use the word “collusive” while passing the judgment. However, this may be due to oversight or lack of appropriate word in the vocabulary. However, it cannot be the only reason to ignore the judgment passed by the court on

the basis of consent. Smt. Bishno, during her lifetime, never questioned the aforesaid judgment. The defendants are not preferential heirs of Smt. Bishno. On the other hand, the plaintiffs are closely related to Smt. Bishno. Plaintiff no.1 is her brother's son whereas plaintiff no.2 is her brother's grandson whereas on the other hand, the defendants have failed to prove that they are having any preferential right over the plaintiffs. In these circumstances, the court is required to decide whether a small mistake by the court while passing the judgment should result in depriving the plaintiffs from a valuable right, which came to vest in them pursuant to the judgment passed by them. In my opinion, the answer would be in the negative. In a subsequent proceeding, the court is not expected to ignore the previous judgments only on procedural errors.

3.5 Similarly, trial court's reason no.2 is also not appropriate. Ideally, a judgment of the court is required to give concise statement of a case, however, when there is no quench for determination on account of admissions of fact, the court is not required to give detailed reasons. However, in a subsequent suit, before ignoring or setting aside the previous judgment, the court is required to find as to whether there are grounds to set aside a contract entered into the parties. A consent decree passed by the court is based upon a contract or an agreement arrived at between the parties in the facts of the case which is approved by the court. Such contract is not liable to be ignored unless the court finds any of the ground specified in the contract Act for ignoring or setting aside a previous contract, particularly when it has also been approved by the

court in its previous judgment. Moreover, it is not appropriate to overlook the judgment of the court for a small or insignificant procedural error, which do not go to the root of the case.

3.6 The First Appellate Court's reason no.3 is factually incorrect. A bare look at the decree passed by the court on 23.05.1985 Ex.A-2 would establish that the decree drawn by the court contains suit number, date of institution, decision, name and addresses of the party to the suit, description of the suit land involved in the suit and the claim and the ultimate order passed by the court. The expression decree has been defined by the CPC under Section 2(2) CPC which means a formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matter in controversy in the suit. Hence, the First Appellate Court has wrongly recorded that the decree does not contain the number of the suit, name or description of the parties and particulars of the claim and the relief granted.

3.7 Similarly, the First Appellate Court's reason no.4 lacks substance and is not sustainable because the decree as prepared by the office is ultimately signed by the Presiding Judge, which includes case number and all other details including description of the suit property. Hence, the decree has to be read in a comprehensive manner and should not only be confined to the body of the decree, which only contains the conclusion drawn. Moreover, before setting aside or ignoring a judgment of the court, the test to be applied is different and there is a requirement of passing the judgment. It is not appropriate for the court

to ignore the previous judgment on the ground that such judgment and decree is not an ideal judgment.

3.8 Similarly, First Appellate Court's reason no.5 is incorrect. It was the defendant, who was challenging the correctness of the judgment and decree passed by the court on 23.05.1985. Even if the plaintiffs did not file the copy of the plaint or the written statement of the previous suit, the defendants could have filed it. The First Appellate Court has erred while observing that it is not possible to connect the land in question, particularly when in the decree the detailed description of the suit land alongwith khewat, khatoni, khasra numbers and the name of the village where the land is located has been given. There was in fact no dispute between the parties with regard to the identification of the suit land. It was not appropriate for the court to make out a new case for the defendants. On the same reasons, the First Appellate Court's reason no.6 is also not sustainable.

3.9 Similarly, the First Appellate Court's reason no.7 is also not appropriate because the failure to get the land mutated does not adversely impact their substantive rights. The mutation is only for the purpose of upgradation of record and it does not in itself determines the rights of the parties.

3.10 The last reason assigned by the First Appellate Court is again perverse. Firstly, the First Appellate Court has overlooked that defendant no.3 in 1988 filed civil suit no.120 of 1988 to challenge the decree dated 23.05.1985, which was withdrawn on 26.08.1989. Secondly, before granting a decree for declaration that an unauthorized

person has become owner by way of adverse possession, the court is required to examine the date or the month or the year when the possession of the party became adverse. While granting declarative decree to the effect that some one has become owner by way of adverse possession, the court is required to examine the well known test laid down by the Supreme Court in **Saroop Singh vs. Banto AIR 2005 SC 4407**. The person claiming adverse possession is required to prove the following requirements:-

- i) on what date he came into possession
- ii) what was the nature of the possession
- iii) whether the factum of possession was known to the other party.
- iv) how long is the possession continued.
- v) his possession was open and undisturbed.

3.11 The continuation of possession during the pendency of the litigation is not considered as undisturbed possession. The permissible possession howsoever long cannot be the basis to grant adverse possession. In fact, the adverse possession implies that it commences from and is maintained against the right. In this case, the court overlooked that in the jamabandi for the year 1977-78, the possession of the defendants is shown as Gair Marusi and in column no.9, the entry is Gair Marusi Chakotedar, which implies that the defendant no.1 and 2 were inducted as tenants by the previous owner. Moreover, defendants no.1 to 3 in civil suit no. 471 dated 13.08.1985 themselves claim to be tenants under Smt.Bishno. Moreover, on a careful reading of the

judgment and decree passed on 01.06.1987, it becomes evident that the court arrived at a conclusion that defendant no.1 to 3 were in possession of the land as tenant under Smt.Bishno but not under the plaintiffs. However, the possession of the defendants no.1 to 3 cannot be termed as unauthorized occupants entitling them to claim title on the basis of the adverse possession. Moreover, none of the defendants have proved ingredients of the adverse possession while appearing in evidence. In fact, DW3 Jora Singh has admitted that Smt. Jangir Kaur defendant no.3 claimed that defendants are tenants on the land. Similar is the statement of DW4 Gurdev Singh. DW5 Smt. Jangir Kaur has admitted that she does not know in which capacity they are in possession of the property.

3.12 It may be noted here that even in the absence of decree, the plaintiffs are proved to be natural heirs of Smt. Bishno. The relationship of Smt.Bishno is not disputed which stands corroborated by overwhelming evidence. Defendant no.3, although propounded the Will dated 15.06.1974, allegedly executed by Smt. Bishno in her favour, however, this issue was never pressed before the trial court. In these circumstances, the First Appellate Court has erred in dismissing the plaintiff's suit for possession based upon title.

3.13 Moreover, the courts below have overlooked the fact that in civil suit no. 471 dated 13.08.1985 filed by Gurdev Singh, Sh.Sukhdev Singh and Jagir Kaur, Sh.Natha Singh, Sh.Labh Singh and Smt.Bishno filed a joint written statement wherein it was specifically stated that now defendant no.1 and 2 are owners by virtue of the court decree. In other words, Smt. Bishno admitted the correctness of the decree, which has

been passed on 23.05.1985 while defending the subsequent suit filed by the defendants. The aforesaid suit was decided on 01.06.1987. During those proceedings, which remained pending for nearly 2 years, Smt. Bishno never disputed the correctness of the consent decree passed on 23.05.1985. Thus, it is safe to conclude that during her lifetime Smt. Bishno never claimed that the decree passed on 23.05.1985 was result of misrepresentation, fraud, coercion on any ground on which the contract can be avoided.

4. Decision:-

4.1 Consequently, the judgment passed by the courts below are set aside while decreeing the plaintiff’s suit for the grant of possession. The Regular Second Appeal stands allowed.

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

03.04.2024
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE