



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

RSA-3565-2023 (O&M)
Reserved on : 29.08.2024
Pronounced on : 16.10.2024

Bijender **Appellant**

versus

Surender Pal Singh and another **Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sant Lal Barwala, Advocate
for the appellant.

PANKAJ JAIN, J.

1. Defendant is in appeal. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the appellant as defendant and respondents as the plaintiffs.
2. Plaintiffs filed suit for possession and permanent injunction pleading that they are owner in possession of Gair Mumkin comprising khewat No.273//204, khatoni No.302, khasra No. 263(4-5), situated within the revenue estate of Paposa, Tehsil Bawani Khera, District Bhiwani. Plaintiffs want to construct their house on a 358 sq. yards plot which is part of the aforesaid land. Demarcation was conducted on 05.01.2018 in which it came to light that defendant No.1 and father of defendants No.2 and 3 have illegally encroached upon the part of the land. Defendants though initially gave assurance to hand over the possession of the encroached land but later on resiled. The plaintiffs



thus prayed for decree of possession alongwith consequential relief of permanent injunction restraining the defendants from altering the nature of the suit property.

3. Defendants No.2 and 3 were proceeded ex-parte. Suit was contested by defendant No.1-appellant. Encroachment was denied. It was claimed that in the year 1998, father of defendant No.1 got khasra No.252 demarcated and constructed house over the plot in question. The demarcation claimed by the plaintiff was never carried out in presence of the answering defendant and thus same were binding upon him.

4. On the basis of pleadings raised by the parties, following issues were framed:-

- “1. Whether the plaintiffs are entitled for relief of possession with consequential relief of permanent injunction as prayed for? OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
3. Whether the plaintiffs have no locus standi to file the present suit? OPD
4. Whether the plaintiffs have no cause of action to file the present suit? OPD
5. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD
6. Whether the plaintiffs have concealed the true and material facts from the court? OPD
7. Whether the suit of the plaintiffs is hopelessly time barred? OPD
8. Relief.”

5. While deciding issue No.1, Trial Court came to the conclusion that plaintiffs proved on record ownership by proving



jamabandi for the year 2015-16 Ex.P-1, wherein they have been recorded co-owners over the suit property to the extent of 1/2 share each in view of the record of right having been proved. Demarcation report Ex.P-4 has been proved which shows encroachment by defendant No.1 to the extent of 160 sq. feet. Resultantly, issue No.1 was decided in favour of plaintiffs and against the defendants. Issue No.2 to 4 were also decided against the defendants. Resultantly, suit filed by the plaintiffs was decreed. The findings stands affirmed by the Lower Appellate Court in appeal preferred by defendant-appellant.

6. Counsel for the appellant while drawing attention of this Court to demarcation report dated 18.07.1999 as Ex.DW-2/A submits that even if any cause of action accrued in favour of plaintiffs, the same was on 18.07.1999 when the defendant was found to be in illegal possession over the suit property. Thus, the present suit filed in the year 2018 is barred by limitation and the Courts below erred in decreeing the suit filed by the plaintiffs.

7. I have heard counsel for the appellant and have carefully gone through the records of the case.

8. The solitary contention raised before this Court by the counsel for the appellant is that the suit is barred by time and that the appellant has become owner by way of adverse possession. However, perusal of the written statement filed by defendant No.1-appellant does not show any plea with respect to adverse possession raised before the Courts below. Rather, the positive case pleaded by the appellant before the Trial Court is that the appellant is not in illegal possession over any part of Gair Mumkin khasra No.263. The plaintiffs proved their title

over the suit property by placing on record jamabandi. The law provides for presumption in favour of record of rights which could not be rebutted by the defendants. Rather by raising plea of adverse possession before this Court, defendant No.1 impliedly admits the ownership of the plaintiffs. Suit for possession based upon titled is governed by the provision of Article 65 of the Limitation Act which reads as under:-

Description of suit	Period of limitation	Time from which period begins to run
65. For possession of immovable property or any interest therein based on title. <i>Explanation.</i> —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.

9. In order to hold that the suit filed by the plaintiff is barred by time, the defendant needs to prove the date on which his possession became adverse to the plaintiffs. Adverse possession being plea of fact



needs to be raised before the Court of the first instance and proved in accordance with law. There being neither any plea nor any evidence with respect to the possession of the defendants being adverse, the plea raised by counsel for the appellant cannot be sustained.

10. In view of above, this Court does not find any reason to interfere in the pure finding of facts recorded by the Courts below after appreciating the entire evidence on record.

11. Consequently, the present appeal is dismissed.

12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

16.10.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No