



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

101**RSA-107-1984 (O&M)****Date of Decision : 14.01.2025****JAWAHAR SINGH AND ORS****.... Appellants****VERSUS****NARINDER SINGH (SINCE DECEASED) THR LRS****.... Respondents****CORAM : HON'BLE MRS. JUSTICE ALKA SARIN****Present : Mr. Munish Jolly, Advocate for the appellants.**

Mr. Chanderhas Yadav, Advocate and
Mr. Anshul Baghla, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

1. The present regular second appeal has been preferred by the plaintiff-appellants challenging the judgment and decree dated 28.09.1983 passed by the First Appellate Court reversing the judgment and decree dated 16.09.1981 passed by the Trial Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellants herein filed a simplicitor suit for possession qua land measuring 16 Bighas 16 Biswas comprised in Khasra No.1041 and 1042 (wrongly mentioned as 1942 in the first page of the judgment and decree dated 16.09.1981 passed by the Trial Court) situated at Palasaur. It was averred in the plaint that this land was obtained by the plaintiff-appellants' father by way of exchange. He had died and now the land had been mutated in the names of the plaintiff-appellants. Out of this land, land measuring 11 Bighas is lying Banjar and the rest of the land is being cultivated. It was further

stated that the defendant-respondent being a shrewd person and in connivance with the revenue officials had got Khasra Girdawari recorded in his name in the column of cultivation. It was further averred that the defendant-respondent had filed a suit for permanent injunction against the plaintiff-appellants herein and had got a stay. Under the garb of the stay order, the defendant-respondent had entered possession in November 1976. The suit filed by the defendant-respondent was decreed in his favour and he was held to be in possession of the land. However, the defendant-respondent challenged the said judgment and decree in an appeal before the First Appellate Court as the finding regarding ownership was returned against him. The appeal filed by the defendant-respondent in the said suit was dismissed.

3. Written statement was filed by the defendant-respondent stating therein that he was owner in possession of the suit land. It was further stated that the plaintiff-appellants' father, namely, Harnam Singh had filed an appeal before the Additional Director of Consolidation, Patiala and vide order dated 04.12.1957, Khasra Nos.1083 and 1129 were given to Kahla Singh (father of the defendant-respondent) and in consolidation Khasra Nos.1041 and 1042 were allotted in lieu of Khasra Nos.1083 and 1129. After the death of his father, the defendant-respondent was continuing to be in cultivating possession and since 1962-63 he is shown as owner of the suit land. Further plea of adverse possession was also raised.

4. Replication was filed denying the contents of the written statement and reiterating those of the plaint.

5. From the pleadings of the parties the following issues were framed :

1. Whether the defendant has become the owner of the disputed land by adverse possession ? OPD
2. Whether the defendant is barred from taking the plea of adverse possession and that of limitation by the principle of res judicata ? OPP
3. Whether the suit is barred by limitation ? OPD
4. Relief.

6. Vide judgment and decree dated 16.09.1981 the Trial Court decreed the suit of the plaintiff-appellants. Aggrieved by the same an appeal was preferred by the defendant-respondent. In the appeal, though a finding regarding adverse possession was affirmed, however, the suit itself was dismissed being barred by limitation vide judgment and decree dated 28.09.1983 passed by the First Appellate Court. Hence, the present regular second appeal by the plaintiff-appellants.

7. On 19.01.2005 the present appeal was dismissed in default. Subsequently an application being CM-12528-C-2017 was filed for condonation of delay in filing the application being CM-12531-C-2017 for restoration of the main appeal. On 23.10.2017 notice in the application for condonation of delay was issued. Thereafter on 08.05.2018 notice in the application for condonation of delay as well as in the application for restoration of the main appeal was issued. Thereafter again on 29.11.2022 notice in both the aforesaid applications was issued. Vide order dated

02.11.2023 the application for condonation of delay as well as the application for restoration of the main appeal were allowed and the appeal was restored to its original number and status.

8. During the pendency of the present appeal, Amar Singh filed an application being CM-366-C-2024 for being substituted in place of Narinder Singh as assignee, which application was allowed vide order dated 16.05.2024 passed by a Coordinate Bench of this Court. Thereafter, the respondents herein filed an application being CM-7344-C-2024 for additional written statement and another application being CM-7345-C-2024 for additional evidence.

9. The respondents herein have filed applications for filing additional written statement and additional evidence in which various subsequent events have been sought to be brought on the record including the proceedings filed in the subsequent suit (Annexure R-2) filed by Amar Singh which suit was dismissed. However, in an appeal the suit of Amar Singh was decreed.

10. The learned counsel for the plaintiff-appellants would contend that though the First Appellate Court has non-suited the plaintiff-appellants only on the ground that the suit was barred as it was not filed within 12 years from the date the possession of the defendant-respondents became adverse, yet on the other hand has held that adverse possession was not proved.

11. *Per contra*, the learned counsel for the defendant-respondents would contend that the subsequent events and litigation would necessitate the filing of an amended written statement and additional evidence.

12. I have heard the learned counsel for the parties.

13. In the present case on the one hand the First Appellate Court held the suit to be barred by limitation not having been filed within 12 years from the date the possession of the defendant-respondents became adverse and on the other hand has held that adverse possession was not proved. The said findings are totally contradictory and hence not sustainable in law.

14. In view of the above, the impugned judgment and decree passed by the First Appellate Court are set aside and the matter is remanded back to the successor Court of Sh. Hira Lal Garg, the then Additional District Judge, Sangrur for a decision afresh. The parties, if so advised, may file the applications for additional evidence and amendment of the written statement before the First Appellate Court, who shall deal with the same in accordance with law. The parties, through counsel, are directed to appear before the successor Court concerned on 06.02.2025 at 10:00 am. Since the dispute pertains to the year 1981, the Court concerned is requested not to grant any unnecessary adjournments to either of the parties and decide the matter expeditiously.

15. The present regular second appeal stands disposed off in the above terms. Pending applications, if any, also stand disposed off.

14.01.2025
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No