



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1307 of 1992 (O&M)

Date of Order:15.01.2025

Baldev Singh and others

.Appellants

Versus

Sawinder Singh (deceased) through LRs

..Respondents

RSA No.1136 of 1992(O&M)

Raghbir Singh (deceased) through LRs

.Appellant

Versus

Savinder Singh (deceased) through LRs & Ors.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajinder Sharma, Advocate
Mr. Mridul Sharma, Advocate
for the appellants.

Mr. Prabhjot Singh Chahal, Advocate
for Mr. G.S.Nagra, Advocate
for the respondents.

ANIL KSHETARPAL, JUDGE (Oral)

1. With the consent of the learned counsel representing the parties, two connected Regular Second Appeals i.e. RSA No.1307 and 1136 of 1992, shall stand disposed of by a common order.

2. Both the appeals have been filed by the plaintiffs to assail the correctness of the First Appellate Court's judgment, which in turn has reversed the judgment passed by the trial court.

3. The crucial issue involved in the present case is whether possession and adverse possession are synonymous?



4. The plaintiffs and the defendants are owner of respective parcels of land which adjoins each other. In other words, their agricultural land abut each other. On 18.10.1988, the plaintiffs filed a suit for possession of land measuring 1 kanal and 16 marlas comprised in Rect. No.560, Killa No.2, situated in village Ajnala, District Amritsar, while alleging that the defendant has taken illegal possession of the land for the last 3 years.

5. The defendant contested the suit claiming to have become owners by way of adverse possession. He denied the plaintiffs' ownership and also claimed that the previous suit was pending. In order to prove the plaintiffs' case, the revenue record was produced and oral evidence was led. The defendant also produced the revenue record.

6. The trial court decreed the plaintiffs' suit after appreciating the evidence. It was held that the defendant failed to prove his adverse possession for a period of more than 12 years before the filing of the suit because the entry for the first time in the revenue record in his favour relates back to October, 1977, whereas the suit was filed in October, 1988.

7. The First Appellate Court reversed the judgment of the trial court and held that in the Khasra Girdwari Ex.D4, the land is shown as vacant in crop Sawni, 1976. Therefore, the possession of the defendant is proved from March, 1976.

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

9. It may be noted here that article 65 of the Schedule attached to the Limitation Act, 1963, provides the period of 12 years for filing a suit by the owner on the basis of any interest based on title. Column No.3 of Article



65 provides that the period of limitation will begin to run when the possession of the defendant becomes adverse to the plaintiffs. As already noticed, the parties are owner of the adjoining land. The suit land is a small parcel of 1 kanal and 16 marlas which is nearly 1/5th of an acre. Hence, the cultivation by the defendant can be on account of mistake without knowing about the encroachment of the plaintiffs' land.

10. Moreover, Ex.D4, copy of the Khasra Girdwari proves that in crop Sawni, 1976, the land was vacant. In such circumstances, the possession will be presumed to be of the owner. The possession of the defendant for the first time is reflected in crop Hadi, 1977, which is harvested in March/April, 1977 and sown in November, 1976. Thus, the possession of the defendant for a period of 12 years before the filing of the suit was not complete.

11. Moreover, additionally the possession and adverse possession are not synonymous. The acquisition of title of adverse possession is required to be established by proving hostile and open possession against the owner. As already noticed, the parties are neighbours. The dispute is with regard to a very small parcel of agricultural land. In such circumstances, the defendant was required to prove that he entered into hostile possession from day one, however, he failed to establish that fact. The defendant has also failed to prove as to when his possession became adverse. The courts have erred in distinguishing between possession and adverse possession.

12. Keeping in view the aforesaid facts and discussion, the judgment passed by the First Appellate Court is not sustainable and hence set aside and that of the trial court is restored.



- 13. Both the appeals are allowed.
- 14. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

January 15, 2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No