

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

RSA-2328-1992 (O&M)
Date of decision :17.02.2025

NIKU RAM AND OTHERS

...Appellants

Versus

MAN SINGH AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Manuj Chadha, Advocate
for the appellants.

Mr. Jyoti Parshad Sharma, Advocate
for the respondents.

HARSH BUNGER, J.

For convenience, parties herein are being addressed as per their status in the original suit.

2. The present Regular Second Appeal has been filed seeking setting aside of judgment and decree dated 08.09.1992 passed by the learned Additional District Judge, Hissar; whereby the judgment and decree dated 26.05.1986 passed by the learned Sub Judge Ist Class, Hansi, has been set aside and the suit filed by the plaintiffs (Man Singh and others) has been decreed.

3. Briefly, plaintiffs (Man Singh and another) filed a suit for prohibitory injunction restraining the defendants from interfering in the possession of the house (fully detailed in the plaint), situated in Mohalla Kalapathar, Hansi measuring *186 sq. yards* and for restraining them from taking forcible possession.

3.1 It was pleaded by the plaintiffs that they are the owners in possession of the house, in question, which was their ancestral house as their father Sher Singh had purchased the land measuring *186 sq. yards* from Jagan Nath and Mahabir sons of Thambu, vide Sale deed dated 19.09.1946. It was further pleaded that their father Sher Singh, constructed a house on the said land and since then, the plaintiffs have been in possession thereof. It was the case of the plaintiffs that defendant Niku Ram was their real uncle and defendants No.2 to 4 were the sons of Niku Ram and they want to take forcible possession of the house in question, although, they had no connection with the same. It was stated that since the defendants had not paid any heed to the request of the plaintiffs for not taking the forcible possession of the house in question, accordingly, the said suit was filed.

4. On the other hand, the defendants contested the suit by raising various preliminary objections and on merits, it was stated by the defendants that about 32-33 years ago, Niku Ram had taken the house in dispute, in exchange from his brother Sher Singh (father of the plaintiffs) in lieu of some area forming part of *300 sq. yards* land purchased by Niku Ram vide sale deed dated 30.12.1948. It was also stated that even otherwise, the defendants have become owners by way of adverse possession.

5. The plaintiffs submitted their replication, denying the averments made by the defendants in their written statement, wherein the factum of exchange was denied. It was further stated that the father of the plaintiff namely, Sher Singh along with his two brothers namely, Padma and Niku Ram had purchased the land measuring *300 sq. yards*, wherein, they constructed their houses of *100 sq. yards* each and the plaintiffs are in

separate possession of the same, whereas, Niku Ram is in possession of the house, situated on *100 sq. yards* area and similarly, Padma (uncle of the plaintiff) is also in possession of the house constructed over *100 sq. yards* area.

6. From the pleadings of the parties, the following issues were framed :-

“1. Whether the plaintiffs are owners in possession of the house in dispute? OPP

2. Whether the defendants want to take forcible possession of the house in dispute? OPP

3. Whether the suit is not maintainable in the present form? OPD

4. Whether the plaintiffs have no locus-standi to file this suit? OPD

5. Whether the suit is not within the period of limitation? OPD

6. Whether the plaintiffs are stopped from filing the suit by their own act and conduct? OPD

7. Whether the suit is bad for non-joinder/misjoinder of necessary parties? OPD

8. Whether the defendants are entitled for special costs u/s 35-A CPC? OPD

9. Whether the defendants have become owners of the disputed property by way of adverse possession? OPD

10. Whether any oral exchange was affected between the parties of the house in dispute as alleged in para No.8 of the preliminary objection of the written statement? OPD

11. Whether the plaintiffs have suppressed the material facts and have not come to the court with clean hands and as such, they are not entitled for discretionary relief of injunction? OPD

12. Whether the defendants raised construction 20 years ago as alleged in para No.1 of the preliminary objection of the written statement? OPD

13. Relief.”

7. The parties led their respective evidence in support of their claims and the learned trial Court, vide judgment and decree dated 26.05.1986, dismissed the suit filed by the plaintiffs.

8. Feeling aggrieved against the afore-said judgment and decree dated 26.05.1986, the plaintiffs preferred an appeal before the learned Additional District Judge, Hisar, which came to be allowed vide judgment and decree dated 08.09.1992; whereby, the trial Court's judgment dated 26.05.1986 was set aside and the suit filed by the plaintiffs was decreed.

9. In the afore-mentioned facts and circumstances, the present regular second appeal has been filed before this Court.

10. Heard.

11. In the present case, the learned trial Court, returned a finding that although, the defendants had admitted the purchase of the disputed property by way of registered sale deed by Sher Singh but they had also alleged transfer and their possession over the disputed property. Learned trial Court held that the defendants have been able to prove their possession over the suit property for the last 32-33 years; accordingly, they have become owners thereof by way of adverse possession. However, the learned first Appellate Court vide impugned judgment and decree dated 08.09.1992, had reversed the findings returned by the learned trial Court and decreed the suit of the plaintiffs, by holding as under :-

“10. It is admitted case that Sher Singh father of the plaintiffs purchased the land measuring 186 Sq. Yards which is now in dispute, fully detailed in para 1 of the plaint, vide sale deed No. 315 dated 19.9.1946. After the purchase of plot

Sher Singh constructed a house over the portion of the plot and thereafter he started living as owner in possession of the same. However, before filing of the suit, Sher Singh died and therefore, his two sons Man Sing & Zile Singh filed the present suit for prohibitory injunction when defendants started interfering in the possession of the plaintiffs over the house in dispute. Niku Ram defendant No. 1 and real uncle of the plaintiff whereas defendants No. 2 to 4 are sons of defendant No. 1 Niku Ram. The case of the defendant No. 1 as pleaded in the written statement is that no doubt the plot in dispute was purchased by Sher Singh father of the plaintiffs in the year 1946 but about 32/33 years back a exchange took place between defendant No.1 and Sher Singh father of the plaintiffs and in that exchange the site in dispute was given by Sher Singh to Niku defendant No. 1 and Niku Ram gave the plot measuring 300 Sq. Yards to Sher Singh which Niku Ram purchased vide sale deed dated 30.12.1948 and since the date of exchange defendants are owners in possession of the house in dispute where as the plaintiffs are owners in possession of the land measuring 300 Sq. Yards and these pleadings are contained in para No. 1 of the written statement merits. At the same time the defendants have taken the plea that since they are in possession of the disputed property for the last more than 12 years, so they have become owners of the suit property by way of adverse possession. However, there is no evidence worth the same to prove the adverse possession of the defendants over the house in dispute. Even Niku Ram defendant who appeared as DW3 never stated in the evidence that he might have become owner of the house in dispute by way of adverse possession. Similarly DW4 Bir Singh who is one of the defendants and is also son of Niku Ram defendant No. 1 has not stated that defendants might have become owner by way of adverse-possession. No other evidence was led by the defendants to prove that they might have become owner by way of adverse possession. On the contrary the plea of DW3 and DW4 in the evidence is that they become owners of the

plot in dispute on the basis of exchange. So it can be said that there is no evidence worth the name on record to prove that the defendants might be owners by way of adverse possession.

11. Now it is to be seen whether the defendants have become owners of the plot in dispute by way of exchange. In the written statement the clear out case is that Niku Ram defendant No. 1 purchased 300 Sq. Yards of land vide sale deed dated 30.12.1948 from Munshi s/o Father r/o Hansi and this plot was given by Niku Ram to Sher Singh father of the plaintiffs in exchange of the property in dispute. It is a case of the defendants that there was oral exchange and there was no writing. So it can be safely said that the alleged exchange does not file place in any document and it remains oral transactions as pleaded by the defendants themselves. In para 8 of the preliminary objection in written statement the defendants have pleaded that the exchange took place in the presence of respectables. The names of these respectables were not disclosed and no respectable has been produced in the court by the defendants to prove that any exchange as alleged by the defendants appeared as DW4 and he stated in the examination-in-chief that at the time of the alleged exchange, he, his father and one Sadhu Ram were present but even this Sadhu Ram was not produced by the defendants to prove the alleged exchange. In this manner it can be said that there is no document of exchange which might support the case of the defendants. Similarly there is no other witness which may support the case of the defendants regarding the alleged exchange. We are left with the self serving statement of the defendants who appeared as DW3 and DW4 and both of them are father and son, so naturally they would support their own case. But even the evidence led by the defendants is quite in contradiction with the pleadings because in the written statement the defendants clearly took place that they gave the plot measuring 300 Sq. Yards to Sher Singh, father of the plaintiffs in exchange of the plot measuring 186 Sq. Yards but in the evidence the defendants have taken the plea that actually

they transferred 200 Sq. Yards of plot to Sher Singh for exchange of the plot measuring 186 Sq. Yards. The plaintiffs in the replication took the plea that the plot measuring 300 Sq. Yards was jointly purchased by the three brothers namely Niku Ram, Padam and Sher Singh with their equal shares of funds and after that they constructed their houses separately on the area of 100 Sq. Yards each. It is admitted by DWs that the houses of the three brothers are situated on an area of 100 Sq. Yards each and they are in possession of their houses. In the evidence the defendants have also stated that out of 200 Sq. Yards of land Sher Singh gave 100 yards of land to Padam uncle of the plaintiffs. But this evidence is beyond the pleadings and it is established law that any evidence or arguments beyond pleadings cannot be looked into. PW1 and PW3 stated that 300 Sq. yards of plot was purchased by the three brothers with joint funds although it was purchased in the name of Niku Ram but they constructed their houses as 100 Sq. Yards each. However, PW1 has stated that his father and his uncle Padam purchased 300 Sq. Yards of plot whereas PW3 stated that the plot measuring 300 Sq. Yards purchased by the father of the plaintiffs, Padam, and Niku Ram. Therefore, in view of this contradiction the lower court did not believe the evidence of PWs. However, this was set a contradiction on the basis of which the evidence of PWs should have been disbelieved by the lower court. It appears that while recording of evidence name of Niku Ram was inadvertently left but otherwise in the replication it is absolutely made clear that the land measuring 300 Sq. Yards purchased by the three brothers namely Sher Singh, Niku Ram and Padam and thereafter they constructed their own houses on 100 Sq. Yards area and this fact is also clearly stated by PW3 Shankar Chand. No doubt there is commission in the evidence of PW1 Man Singh regarding the name of Niku Ram but from this it cannot be inferred that there is any contradiction in the case of the plaintiffs. Rather this is an inadvertent omission on the part of plaintiff Man Singh and

no importance can be attached to this omission particularly when the case of the plaintiffs is very clear in replication and it is established law that replication is a part of the pleadings. The plaintiff have taken the plea that they have been residing in the house the plot of which was purchased jointly by the father of the plaintiffs, Padam and Niku Ram and later on they constructed their separate houses, which is 100 Sq. Yards each and number of this house was 193 and their vote and ration card are made in the said house i.e. 193. So the lower court has taken a wrong adverse view against the plaintiffs for not producing ration card and voter list regarding the house now in dispute, since the plaintiffs are residing in the separate house then the house in dispute, so they were not required to produce ration card and voter list and as such no adverse view can be taken. On the contrary the adverse view should have been taken against the defendants who did not produce any voter list or ration card showing their residence in the house in dispute. From the house tax register Ex. P4, Ex. P5 and Ex. P6 and oral evidence it is amply proved that all the three brothers were residing on their separate constructed house of the plots of 100 Sq. Yards each and none of the parties are residing in the plot in dispute. The lower court has wrongly held that on the basis of Ex. DW2/1 the house tax assessment register pertaining to the house No. 243/5 for the year 1984-85 the possession of the defendants stands proved because this document was got prepared by the defendants when the civil suit was already pending and there is no evidence on record to show that this document relates to the property in dispute. Moreover apart from this document the defendants have not produced any earlier record regarding the property in dispute, so no importance can be attached to the stray entry as contained in Ex. DW2/A to held that defendants are in possession of the house in dispute. It is not the case of the defendant Niku Ram that he might have retained 100 Sq. Yards of land out of 300 Sq. Yards and that he might have given 200 Sq. Yards of land to the father of the plaintiffs rather the case

of the defendants in the written statement is that 300 Sq. Yards plot was given by Niku Ram to the father of the plaintiffs. It is not the case of the defendant No. 1 that he might be residing in the plot of 100 Sq. Yards. Since there is no pleadings in this behalf, so the defendants cannot lead any evidence beyond pleadings. Defendant No. 2 vide notice dated 15.12.1981 which is not Ex. P.3 admitted the possession of the plaintiffs and thumb impression of defdt. No.2 Bir Singh have been duly proved from the evidence of PW5 Yas Pal Chand Jain Finger Print Expert who submitted his report Ext. PW.5/1. The witness was duly cross examined but learned defence counsel was not able to shake his testimony. So it can be said from that even vide notice Ex. P3 defendant No. 2 clearly admitted the possession of document Ex. P5 does not relate to the property in dispute rather this relate to some other property the plaintiffs over the suit property in which the defendants are still residing PW.7 Munshi Ram who sold 300 Sq. Yards of plot to Nek Ram in the year 1946 has clearly stated on oath that this plot was jointly purchased by the three brothers and thereafter they constructed their houses on 100 Sq. Yards each. PW.7 Munshi Ram is an old man and he is not interested in favour of the plaintiffs in any manner. There is no reason to disbelieve the testimony of PW.7 to hold that 300 Sq. Yards plot was purchased by the three brothers jointly although it was purchased in the name of Niku Ram but soon after its purchase the three brothers constructed their houses on their respective shares and started living therein. So the evidence of PW7 Munshi Ram negatives the story of the defendants that they gave 300 Sq. Yards or 200 Sq. Yards of land to Sher Singh in exchange of the plot in dispute. There is nothing on record to show that the defendants might have raised any construction over the site in dispute whereas the plaintiff has clearly stated in examination in chief that his father constructed the house on it and this witness was not cross examined on this aspect, so it can be said that there was no rebuttal to this statement.

11. From the evidence adduced it is amply proved that the plaintiffs are owners in possession of the house in dispute and that the defendants have got no concern with the same. The lower Court has wrongly dismissed the suit of the plaintiffs and has not properly appreciated the evidence in this case. So there is merit in this appeal and the same is hereby accepted. To judgment and decree of the lower Court is hereby set aside. On the contrary a decree is passed where by the defendants are restrained from interfering in the possession of the plaintiffs over the house in dispute, fully detailed in the head note of the plaint, and from forcibly ousting the plaintiffs from the property in dispute. The parties are left to bear their own costs.”

12. I have carefully gone through the findings/observations made by the learned First Appellate Court and upon considering the same, I am of the considered view that the findings of the first Appellate Court, are based upon appreciation of facts/pleadings as well as the evidence on record and I see no illegality or perversity in the findings returned by the first Appellate Court. Furthermore, no question of law, much less a substantial question of law, is involved herein, so as to exercise appellate jurisdiction under Section 100 of Civil Procedure Code, 1908.

13. In view of the above, the present appeal is dismissed, being bereft of any merit. Resultantly, the impugned judgment and decree dated 08.09.1992 passed by the learned Additional District Judge, Hisar; is maintained.

14. All pending application/s, if any, shall also stand closed.

February 17, 2025
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No