



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

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RSA-1897-1999 (O&M)

Date of decision : 22.01.2025

Harbhajan Singh (since deceased) through LR's and others**..... Appellants****versus****Manmohan Singh****..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Sunil Chadha, Senior Advocate with
Ms. Sonia Monga, Advocate
for the appellants.

None for the respondent.

PANKAJ JAIN, J. (Oral)

1. Plaintiff is in second appeal. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the appellants as plaintiffs and respondent as defendant.

2. As per the records, respondent was at one point of time represented through Mr. Hemant Saini, Advocate. His power of attorney dated 15.04.2004 is on record. Despite repeated services, he opted not to appear.

3. Plaintiff filed suit for possession of the suit land as detailed out in the head note of the plaint. Defendant did not dispute the ownership of the plaintiff, but claimed to be owner having perfected his title by way of description. Positive stand taken by the defendant was that he purchased adjoining land from the plaintiff vide sale deed dated 21.09.1966 and raised construction on the land purchased in the year



1967. At the time of raising construction, he encroached upon the suit land and has been in continuous uninterrupted possession as true owner thereof since then. Both the Courts below have returned concurrent finding, holding that the defendant successfully proved his possession over the suit land since 1967. The same remained hostile since then and thus, the defendant became owner by way of adverse possession.

4. Mr. Chadha has assailed the aforesaid findings recorded by the Courts below. He submits that in order to prove adverse possession, defendant was required to plead and prove a specific date on which the possession of the defendant became hostile and it is only thereafter that he can claim to have perfected his title over the suit land by way of description. He refers to document Ex.D-2, i.e. the communication issued by plaintiff to the respondent dated 24.03.1975, wherein the plaintiff brought to the notice of the defendant of being in illegal possession of land measuring 367 sq. yds. He submits that the said communication remained unresponded. Thereafter, demarcation was effected on 07.07.1984 which proves the illegal possession of the defendant to the plaintiff. Thus, the present suit filed on 14.08.1986 cannot be said to be beyond limitation. In order to hammer forth his contention, he relies upon ratio of law laid down by Supreme Court in the case of ***Karnataka Board of Wakf vs. Govt. of India and others*** reported as ***(2004) 10 SCC 779, which has been further reiterated with approval in M. Radheshyamlal vs. V. Sandhya and another***, reported as ***2024(2) RCR (Civil) 351***.

5. I have heard counsel for the appellants and have carefully gone through the records of the case.



6. So far as the controversy involved in the present appeal is concerned, the same is quite narrow. The defendant admits the title of the plaintiff, but claims to have perfected his title by way of adverse possession. Thus, the only issue that arises for the consideration before this Court is:-

(i) Whether the defendant can be said to have become owner of the suit property by way of adverse possession?

7. Courts below have found that the defendant has proved his adverse possession and thus, dismissed the suit filed by the plaintiff. In order to return the said finding, Courts below have heavily relied upon sanction plan with respect to the construction raised by the defendant Ex.DW-4/A, licence to the Gurbachan Cold Storage Ex.D-7 dated 14.07.1981. Further reliance has been placed upon observations made in column No.4 of the registration certificate, wherein it has been recorded that the production has commenced in the storage since February, 1967. Courts below thus, came to the conclusion that since the cold storage is in production since February 1967, the possession of the defendant over the suit property is proved at least from the said date and thus, the present suit filed on 14.08.1986 is beyond the prescribed period of limitation.

8. Trite it is that the issue related to adverse possession is a blend of law and fact. In terms of Section 41 of the Punjab Courts Act as interpreted by five Judges Bench in the case of ***Pankajakshi vs. Chandrika (2016) 6 SCC 157***, it is not necessary to frame question(s) of law. Perversity in the findings recorded by the impugned judgment



amounts to question of law and falls within the scope of second appeal. As per the settled proposition of law, possession howsoever long it may be, cannot be held to be adverse. As per the classical requirement, a possession to be an adverse possession needs to be *nec vi, nec clam, nec precario* i.e. the possession must be adequate in continuity, in publicity and adequate in extent to show that it is a possession adverse to the competitor. Possession itself does not amount to ownership. While ownership is de jure recognition of a claim to property, possession is de facto counter part thereof. As per classic law, possession implies:-

- (i) *Corpus i.e. physical control or actual possession;*
- (ii) *Animus i.e. the desire to possess.*

Both these elements are necessary to constitute possession.

9. There is no statutory definition of adverse possession. In law, it is understood to be possession inconsistent with the title of the true owner. It implies the possession which is:-

- (a) *commenced in wrong; and*
- (b) *maintained against right.*

10. Supreme Court in ***S.M. Karim vs. Bibi Sakina, 1964 AIR Supreme Court 1254***, while laying down the requirements of adverse possession, observed as under:-

“xx xx

Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse



possession and the prayer clause is not a substitute for a plea.”

11. Same was reiterated in ***D.N. Venkatarayappa and another vs. State of Karnataka and others, 1997 AIR Supreme Court 2930***, observing as under:-

“xx xx

Further, this Court, in the case of *Danappa Revappa Kolli v. Gurupadappa Kallappa Pattana Shetti*, ILR (1990) Karnataka 610, while referring to the decision of the Supreme Court in *Kshitish Chandra's case* (supra), relied upon by Sri Narayana Rao in support of the plea of adverse possession, has observed that apart from that actual and continuous possession which are among other ingredients of adverse possession, there should be necessary animus on the part of the person who intends to perfect this title by adverse possession. The observations made in the said decision reads thus:

“5. ... Apart from actual and continuous possession which are among other ingredients of adverse possession, there should be necessary animus on the part of the person who intends to perfect his title by adverse possession. A person who under the bona fide belief thinks that the property belongs to him and as such he has been in possession, such possession cannot at all the adverse possession because it lack necessary animus for perfecting title by adverse possession.”

Therefore, it is clear that one of the important ingredients to claim adverse possession is that the person who claims adverse possession must have set up title hostile to the title of the true owner.”

12. Following the same view, Supreme Court in ***Karnataka Board of Wakf vs. Govt. of India and others (2004) 10 SCC 779*** held the same thread of reasoning to observe that:-

“11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another



person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : *S.M. Karim v. Bibi Sakina* [AIR 1964 SC 1254], *Parsinni v. Sukhi* [(1993) 4 SCC 375] and *D.N. Venkatarayappa v. State of Karnataka* [(1997) 7 SCC 567]. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [*Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma* [(1996) 8 SCC 128]”.

13. Commenting upon the requisite pleadings and necessity to establish the facts and absence of equities in the case of adverse possession, Supreme Court in *Dr. Mahesh Chand Sharma vs. Raj Kumari Sharma*, 1996 AIR Supreme Court 859, observed as under:-

“XX XX X

We may emphasise that a person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all the facts necessary to establish his



adverse possession. For all the above reasons, the plea of limitation put forward by the appellant, or by Defendant Nos.2 to 5 as the case may be is rejected.”

Therefore, to prove the plea of adverse possession :-

- (a) The plaintiff must plead and prove that he was claiming possession adverse to the true owner;
- (b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner;
- (c) The plaintiff must also plead and establish when he came into possession; and
- (d) The plaintiff must establish that his possession was open and undisturbed.

It is settled law that by pleading adverse possession, a party seeks to defeat the rights of the true owner, and therefore, there is no equity in his favour. After all, the plea is based on continuous wrongful possession for a period of more than 12 years. Therefore, the facts constituting the ingredients of adverse possession must be pleaded and proved by the plaintiff.”

14. Supreme Court in ***M. Radheshyamlal vs. V. Sandhya and another, reported as 2024 AIR (Supreme Court) 1595*** reiterated the same principles.

15. Prior to looking at the evidence relied upon by the Courts below, it will be apt to peruse the pleadings raised by the defendant in the written statement claiming adverse possession. The same reads as under:-

“1. That it is wrong and denied that the plaintiffs are owners/co-owners of land comprised in Khewat no. 210, Khatauni no.233, Rect. no. 37, Killa no. 17/3/3, 24/2, 24/4 and 25/2 fully described in the head note of the plaint.

2. That it is correct and admitted that the defendant is owner of land comprised in Rect.no. 37,



Killa no-17/3/4, 17/3/2, 18/3/3, 24/1, 24/3 and 25/1 as shown in the jamanbandi of the yr.1980-81, but it is denied as incorrect that it is adjoining the land owned by the plaintiffs.

3. That it is correct that the plaintiffs have sold the land to the defendants comprised in Khewat no. 210, Khatauni no.233, comprised in Rect.no.37, Killa no. 17/3/2, 17/3/4, 16/2/3, 24/1, 24/3 and 25/1, but it is correct that the plaintiffs, at that time, had carved-out a passage comprised in Khewat no.17/3/3 and 24/2, as alleged in this para of the plaint. It is admitted that this passage leads to the colony carved-out by the plaintiffs. This passage is only 24 feet wide as shown in Annexure-V. It is correct that the defendant illegally and unlawfully encroached-upon the land of the plaintiffs meas. 165 sq-yrds. out of killa no. 24/4 and 25/2. The defendant purchased the land as mentioned in para 2 of the plaint from the plaintiffs vide registered sale-deed registered on 21-9-66 (Photostat copy of the sale-deed is Annexure-I, while the site-plan attached to it is Annexure-I-A. The defendant raised construction on the said land and constructed boundary wall and other construction in year 1967 after getting the plan sanctioned by Ludhiana Improvement Trust, Ludhiana. The defendant is carrying on the business of Cold Storage under the name and style of Manmohan Singh and Company. The said cold-storage is known as Gurbachan Cold Storage. The defendant Manmohan Singh is the Managing Director of M/s. Manmohan Singh & Co, which is a partnership firm duly registered with the Registrar of Firms, Punjab at Chandigarh. The defendant's firm was duly issued a licence under the Cold Storage Order, 1964, by the



Government of India, Ministry of Food, Agriculture, CD. & C., (Department of Food), dated 5-2-1970. Photostat copy of this licence is Annexure II. The cold storage of the defendant commenced production in February, 1967 and a certificate of Final-Registration was duly issued by the Government of Punjab, Directorate of Industries, photostat copy of which is Annexure-III. The defendant has been paying house-tax on the said property since 1967. Photostat copy of the house-tax receipt issued by Municipal Committee, Ludhiana, for the year 1970-71 is Annexure-IV. The defendant has been in continuous, un-interrupted, hostile, open and adverse possession as owner of the land in excess of that covered by the registered sale-deed dated 21-9-66 to the knowledge of the plaintiffs since 1967 and the property in possession of the defendant is shown in red in the site-plan Annexure V. The plaintiffs did object when the defendant took hostile and adverse possession of the land in excess of the property covered under the said sale-deed and the possession as such of the defendant has been notorious as regards the plaintiffs till date. The defendant has thus become the owner of the excess land in his possession by way of adverse possession. Moreover, the suit of the plaintiffs is barred under the limitation Act as it is filed about twenty(20) years after they came to know of the illegal encroachments by the defendant as such the suit is barred.”

16. From the aforesaid pleadings, it is evident that though defendant claimed that he was in possession of the suit land since 1967, yet no date has been given as to when the alleged possession of the defendant became hostile. Even communication Ex.D-2 remained



unresponded. Defendant never asserted that he is in possession of the suit land as a true owner. Remarks in column No.4 of the registration certificate to the effect that the cold storage commenced its production in February 1967 have no bearing on possession of the defendant over the suit property. There is no evidence regarding the source of the said noting in column No.4 of the registration certificate. Author thereof has not been examined to show as to on what basis the said entry was recorded. The finding recorded by the Lower Appellate Court that the registration is given only after verifying the facts on the spot, is conjectural.

17. There might arise an occasion where true and rightful owner confronts a wrongful possessee. In case the possessee opts to remain silent, he cannot claim his possession to be hostile. Animus-the state of mind needs to be exhibited to claim possession to be adverse.

18. In view thereof, this Court finds that the Courts below erred in holding defendant to have become owner by way of adverse possession and in dismissing the suit filed by the plaintiff.

19. As a sequel of discussion held hereinabove, the findings recorded by the Courts below on issue No.3 and 4 are hereby reversed. Plaintiff being admittedly the owners of the suit land are hereby held entitled to the possession of the suit property.

20. Present appeal stands disposed off. Decree be drawn.

21. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

22.01.2025

Dinesh

Whether speaking/reasoned :
Whether Reportable :

Yes
Yes