
(1995) 07 P&H CK 0097

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1885 of 1984

Baldev Singh and Others

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 04-07-1995

Acts Referred:

Limitation Act, 1963 — Article 64, 65

Citation : (1995) 111 PLR 441

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : A.S. Jattana, for the Appellant; N.S. Bopari, AAG, for the Respondent

Final Decision : Allowed

Judgement

N.K. Kapoor, J.—This is plaintiffs regular second appeal against the judgment and decree of the Additional District Judge affirming in appeal the judgment and decree of the trial Court whereby the suit of the plaintiffs was dismissed.

2. Plaintiffs filed suit for possession of land measuring 6 kanals 16 marlas on the allegation that they are owners of the suit land and that in the year 1973 defendant No. 1 forcibly encroached upon the land and started planting trees thereupon. Notice u/s 80 C.P.C. was served upon the defendant to admit the claim of the plaintiffs and to deliver back the possession of the property in dispute and on the refusal of the State to accept the claim of the plaintiffs present suit was filed in the Civil Court. Defendant-State of Punjab put in appearance, filed written statement and resisted the claim of the plaintiffs on the ground of limitation. In addition thereto the defendant set up the plea of adverse possession.

3. On the pleadings of the parties, the following issues were framed :-

1. Whether the notice u/s 80 C.P.C. is valid? OPP.

2. Whether defendant No. 1 had encroached upon the suit land forcibly? OPP.

3. Whether the plaintiffs are owners of the suit land? OPP.

4. Whether defendant No. 1 is entitled to special costs u/s 35 A.P. of C.P.C? OPD.

4-A Whether the suit is within time? OPP.

4-B Whether the defendant is the owner of the suit property? OPD.

4-C Whether the defendant is the owner of the suit property by way of adverse possession? OPD.

4-D Whether the plaintiff is estopped to bring the present suit by his act and conduct? OPD.

4-E Whether the plaintiff has got no cause of action? OPD.

5. Relief.

4. Issue No. 1 was decided in favour of the plaintiffs. Issues No. 2, 4-B and 4-C were taken up together by the trial Court. Issue No. 2 was decided against the plaintiffs whereas issues No. 4-B and 4-C were decided in favour of the defendant. Under issue No. 3 it was held that the plaintiffs are owners of the suit property. However, the Court held that in view of its decision under issues No. 4-B and 4-C the defendant has become owner by way of adverse possession and so decided this issue against plaintiffs. Issue No. 4-A was also consequently decided against the plaintiffs holding that the suit is not within limitation. Issue 4-D was also decided in favour of the defendant. Issue No. 4-E was decided in favour of the plaintiffs. Issue No. 4 was decided against the defendant. Resultantly, the suit of the plaintiffs was dismissed.

5. Before the appellate Court the matter was once again examined on facts as well as law. Appellate Court, however, found no ground to differ with the findings of the trial Court and so dismissed the appeal.

6. Before me the learned counsel for the appellants has urged that the Courts below have erred in law in not properly perusing the revenue record as well as the oral evidence adduced by the plaintiffs in support of their plea, which has consequently resulted in failure of justice. According to the plaintiffs once the Court had come to the conclusion that the plaintiffs are owners of the suit land it was for the defendant to prove beyond any element of doubt that it has perfected its title by way of adverse possession. According to the appellants there is no clear evidence on record on the basis of which it could be inferred that the defendant encroached upon the land way back in the year 1965 or planted trees thereupon. Otherwise too, the revenue record till today clearly prove that suit land is owned by the plaintiffs. The counsel for the defendant mainly relied upon the reasoning advanced by the Courts below in support of their conclusion.

7. I have heard the learned counsel for the parties and perused the impugned judgments of the Courts below. Plaintiffs filed the suit for possession and to

prove it placed on record the copies of revenue record in the nature of jamabandis. The Court accepted this plea of the plaintiffs and so decided issue No. 3 in favour of the plaintiffs. Defendant-the State of Punjab took up the specific plea to the effect that it has become owner of the property by way of adverse possession. Issue No. 4-C. To prove this issue, the defendant examined one Shri Naranjan Singh who in his statement deposed that some Kikar and Tahli trees were planted alongwith the strip of land owned by the plaintiffs. D.W. 2 Mohan Singh has made statement that trees were auctioned in the years 1973, 1974 and 1979. In addition thereto defendant placed reliance upon the notification DW 2/A vide which the strip of land alongwith the trees has been transferred to the Forest Department and declared to be a protected forest.

8. The matter is to be examined in the light of Articles 64 and 65 of the Limitation Act. Under Article 64 a person in possession of property in case of his dispossession can file a suit to claim possession of the property within 12 years from the date of dispossession. Under Article 65 in case" of possession of immovable property or any interest therein based on title it is for the defendant to prove that he has remained in possession for a period of 12 years and so has become owner by way of adverse possession. Admittedly, the present suit is based on title and so the onus heavily lies upon the defendant to prove that he has become owner by way of adverse possession as per Article 65 of the Limitation Act. Naranjan Singh's statement is only to the effect that some Kikar and Tahli trees were planted alongwith the strip of land. DW 2 Mohan Singh has stated that some trees were auctioned in the year 1973, 1974 and 1979. It has come in evidence that by the side of the land of the plaintiffs there is a land owned by the Canal Department of the Government, which is in the form of canal minor. It is by the side of this canal minor that some Kikar and Tahli trees have been planted by the defendant. The notification DW 2/A relates to this strip of land alongwith the trees planted thereupon: It is not the case of the defendant that they have acquired the land of the plaintiffs. Taking the best case of the plaintiffs that trees had been auctioned in the years 1973, 1974 and 1979 the present suit filed by plaintiffs on 10.1.1979 is well within the period of 12 years. Finding of the Courts below in respect of issues No. 4-B and 4-C are thus unsustainable and are consequently reversed. Resultantly, the appeal is accepted and the judgments and decrees of the Courts below are set aside and the suit of the plaintiffs is decreed as prayed. No order as to costs.