
(2006) 03 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1727 of 1990

Gurdial Kaur Bhullar (Deceased) by L.Rs.

APPELLANT

Vs

Inderjit Singh Jeji and Others

RESPONDENT

Date of Decision : 01-03-2006

Acts Referred:

Citation : (2006) 4 CivCC 274 : (2006) 3 CivCC 253 : (2006) 143 PLR 320 :
(2006) 3 RCR(Civil) 26 : (2006) 1 RCR(Rent) 552

Hon'ble Judges : Kiran Anand Lall, J

Bench : Single Bench

Advocate : Sudhir Mittal, for the Appellant; M.J.S. Sethi and Amit Sehti, for the Respondent

Final Decision : Dismissed

Judgement

Kiran Anand Lall, J.—Gurdial Kaur wife of Ram Singh, resident of House No. 796/3, Mohalla Jejian, Top Khana Road, Patiala, filed Civil Suit No. 486-T, on 30.7.1983, for declaration that she is in adverse possession of the disputed house. She also claimed the relief of permanent injunction, restraining Harchand Singh Jeji defendant from interfering in her peaceful enjoyment of the house.

2. Harchand Singh Jeji died during pendency of suit and his legal representatives Jasmer Singh Jeji, etc. were brought on record, while Gurdial Kaur died during the pendency of this R.S.A. and her legal representatives were also brought on record.

3. As per averments made in the plaint, Gurdial Kaur had been in actual, physical, continuous, and uninterrupted possession of the house, for the last 30 years, without payment of rent. She had spent huge amount on its repairs and had obtained electricity connection also therein, through her son, Jaswinder Singh. Water-supply and sewerage connections were also obtained by her and her family members. One Sarup Singh was also residing in a portion of the house, as her tenant. She further claimed that Harchand Singh Jeji who was an

influential person had been threatening to forcibly dispossess her, and he had also started disclaiming her title over the house. She, therefore, filed the suit for declaration to the effect that she had become owner by adverse possession and asked for a decree for permanent injunction, also.

4. The suit was contested by Inderjit Singh Jeji, one of the legal representatives of Harchand Singh Jeji. He denied the claim of adverse possession of Gurdial Kaur. According to him, the house came to him through inheritance from his father Harchand Singh Jeji who was its owner. Ram Singh, husband of Gurdial Kaur, was an employee of Harchand Singh Jeji who had given this house to him (Ram Singh) for his residence till he would remain in his employment. After the death of Harchand Singh Jeji, Ram Singh ceased to be his employee, and was therefore, liable to vacate the house. It was further pleaded that Gurdial Kaur had been living in the house only being wife of Ram Singh and as Ram Singh had been in possession of the house as an employee of Harchand Singh Jeji, she was not entitled to claim ownership thereof on the basis of "adverse" possession.

5. The trial Court framed the following issues:

1. Whether the plaintiff has become owner of the house in dispute by adverse possession? OPP

2. Whether the house was given by Harchand Singh to Ram Singh husband of the plaintiff for residence as an employee? OPD

3. Relief.

6. The trial Court recorded findings of both the issues in favour of the Gurdial Kaur plaintiff and suit was decreed. But, the first appellate Court reversed the verdict and dismissed the suit, holding that the plaintiff had failed to prove her claim of adverse possession over the house.

7. The plaintiff, thereafter, came up in his regular second appeal, challenging the verdict of the first appellate Court.

8. Since regular second appeal could be heard only on a substantial question of law, the plaintiff formulated the following two questions describing those as substantial questions of law:

(1) Whether the learned first appellate Court was justified in reversing the well reasoned Judgment of the learned trial Court, keeping in view the evidence available on the record?

(2) Whether the Plaintiff-appellant has succeeded in establishing her possession on the disputed Property?

9. I have heard arguments addressed by learned Counsel for both sides and have also carefully gone through the records.

10. Learned Counsel for the appellants contended that the lower appellate Court had reversed the well-reasoned judgment of the trial Court, without taking into

consideration the evidence available on record, and this fact is, in itself, a substantial question of law. He referred to Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., in this regard. I have carefully gone through this judgment but found that it is of no help to the appellant. In that case, the first appellate Court had reversed the trial Court findings on possession and adverse possession, and the second appeal was dismissed by the High Court without recording any reasons and without granting an opportunity to the plaintiff-appellant to formulate a substantial question of law. The High Court itself also did not frame any such questions. Due to such facts and circumstances the Apex Court allowed the appeal and remitted the case back to the High Court for hearing and deciding the second appeal afresh. But, that is not the position in the present case. Even otherwise, the first appellate Court herein, had dealt with each and every aspect of the case and taken into consideration all the evidence available on record, and then, arrived at the conclusion that the trial Court had gone wrong in holding the plaintiff to have become owner thereof on the basis of adverse possession.

11. The second question, projected as substantial question of law, is, in fact, not a question of law even, what to talk of being a substantial question of law and as such, cannot be allowed to be taken up in second appeal.

12. Otherwise also, by no method of interpretation, Gurdial Kaur, who had been living in the house, in her capacity as wife of Ram Singh to whom it had been given by his employer Harchand Singh Jeji (deceased defendant) for residence during the course of his employment, could be permitted to claim adverse possession of the house. The possession over the house was, clearly, of Ram Singh and the plaintiff had been residing therein, as his wife, and not in her own capacity.

13. Learned Counsel for the respondents pointed out that though the plaintiff very well knew the name of the owner of the house, she intentionally chose to remain silent in that regard, in the plaint. He referred to a copy of plaint (Ex. DX/2) of a suit filed by her against the Municipal Committee, Patiala and others, in respect of this house, wherein she had averred that the house in her possession originally belonged to Harchand Singh Jeji. The obvious inference which can be drawn from the factum of omission of the name of the owner of the house from the plaint of the present suit is that she intentionally did so, as her husband was in possession of the house of his (of owner) employee and his status was, as such, of his licensee.

14. The position which emerges is that the plaintiff had been residing in the house, being the wife of Ram Singh. She admitted, as PW5, that she found entry into this house, for the first time, when she got married to Ram Singh, and at that time, her parents-in-law were also living in it. It cannot, therefore, be said that she had entered into possession of the house in her individual capacity. But, the claim set up by her is not only of her own possession but of adverse possession, over the house. As per the settled law, adverse possession must commence with wrongful dispossession of rightful owner at some particular time

and it must be actual, open, notorious, hostile, as a matter of right, continuous, and exclusive, and such possession should be maintained for the statutory period of 12 years, and the mere possession, howsoever long, cannot be termed as adverse to the true owner. In 1998 (18) AILLR 614, Dr. Bhargava & Co. and Anr. v. Sh. Shyam Sunder Seth, it was held as under:

Adverse possession means the hostile possession, that is, a possession which is expressly or impliedly in denial of the title of true owner. It follows that where a wrong doer is not permitted by law to advance any hostile title to the true owner, his possession cannot be adverse to the true owner. A. person inducted as licensee must continue to be regarded as licensee until by some overt act he disclaims. It has been held in M.V.S. Manikayala Rao v. M. Narasimhaswami and Ors. AIR 1996 S.C. 470 that the question of adverse possession is a question of fact. Thus, a person who claims title on the basis of adverse possession, must establish the same by unequivocal evidence that his possession was hostile to the real owner and amounted to denial of title of true owner. In case of permissive possession, the person who is in possession, must allege and prove some overt act.

15. Faced with the above legal position, learned Counsel for the appellants contended that by obtaining electricity, water and sewerage connections in her name and the names of her family members and by letting out portions of the house to tenants, Gurdial Kaur had been openly disclaiming the title of the true owner and as such, the said judgment cannot be used to her disadvantage. There does not, however, appear any merit in the contention. The fact that a person living in the premises obtains such connections in his name or gets the premises repaired, would not, by itself, indicate that he had disclaimed the title of the true owner.

16. In so far as the plea that Gurdial Kaur had been letting out portions of the house to tenants is concerned, name of only one tenant viz. Sarup Singh, was disclosed in the plaint and names of two other tenants, Manbhari and Parlad Kumar, were disclosed in the replication. But, it is significant to note that none out of these three, was put in the witness-box. Instead, two other persons Sudh Singh PW6 and Satpal Singh PW7, appeared in evidence and claimed themselves to be tenants of Gurdial Kaur in this house. Of course, their oral testimony cannot be relied upon as their names did not find mention in the plaint or even replication. Otherwise also, when it was her husband who was licensee in the house and she had been living there, being his wife, there could be no question of any portion of the house having been let out by her.

17. Gurdial Kaur had not even pleaded as to how "her" possession started over the house or who was the original owner of the house, whereas the case of respondents, from the very beginning, was that the house was given to Ram Singh, husband of Gurdial Kaur, as licensee, for residence, by his employer Harchand Singh Jeji. Had the plaintiff-appellant wanted, she could have produced, her husband (Ram Singh) in evidence to disclose the correct position.

But, she did not do so. This fact also goes a long way in demolishing her plea of adverse possession over the house.

18. There is, thus, no merit in the appeal and the same shall stand dismissed, with costs through-out.