
(2010) 09 P&H CK 0249

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1415 of 1985

Hari Charan and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:

Limitation Act, 1963 — Article 65

Citation : (2011) 161 PLR 87

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Judgement

Mahesh Grover, J.—This Regular Second Appeal is directed against judgment and decree dated 19.2.1985 passed by the District Judge, Bhiwani (hereinafter described as "the first appellate Court") whereby the appeal of the Defendant-Respondent was accepted, the judgment & decree dated 1.4.1983 of the Senior Sub Judge, Bhiwani (referred to hereinafter as "the trial Court") were set aside and the suit of the Plaintiffs-Appellants was dismissed. The Plaintiffs-Appellants had averred that the Defendant-Respondent, State of Haryana, had usurped their land about six years back. The suit was filed in the year 1981.

2. The Defendant, apart from taking several pleas, pleaded that the suit was barred by limitation and that a road had been constructed on the land in question for the benefit of the public and that the Plaintiffs could not now seek possession thereof. It was further pleaded that the land in dispute was in possession of the State for the last about sixteen years and, therefore, the same had ripened into ownership by way of adverse possession.

3. The trial Court framed as many as fourteen issues on the pleadings of the parties including those of limitation and res judicata. After appraisal of entire evidence on record, the trial Court decreed the suit, but in appeal the first appellate Court reversed its findings and while doing so, it concluded that the Defendant-Respondent had become owner of the suit land by way of adverse possession. It has resulted in the filing of the instant appeal by the Plaintiffs.

4. Learned Counsel for the Plaintiffs-Appellants has contended that the findings recorded by the first appellate Court are wrong as the revenue record consistently showed the ownership of the Plaintiffs over the suit land and the Defendant-Respondent unauthorisedly entered upon its possession.

5. He further contended that in this view of the matter, the Defendant cannot claim adverse possession, more-so when it is a State. Learned Counsel for the Plaintiffs-Appellants submitted that no authority of law was shown by the Defendant-Respondent on the basis of which the possession of the suit land was taken by its functionaries. He, thus, prayed for acceptance of the appeal.

6. On the other hand, learned Counsel for the Defendant-Respondent, at the outset, contended, that the appeal has not been validly filed and cannot be recognised by law as the Appellants herein are Trustees of two different trusts and the suit, as also the instant proceedings, have been initiated through one Gopi Ram, who has been described as their authorised agent, but no resolution authorising him to do so was placed on record: He further contended that this is a question of law which can be raised at any stage of the proceedings. He, thus, submitted that the appeal as such cannot be recognised and deserves to be dismissed. On merits, it was submitted by the learned Counsel for the Defendant-Respondent that the revenue record showed that the State was in possession of the suit land since 1962-63 and even if the best evidence of the Plaintiffs-Appellants is to be seen, then also, the revenue entries in the shape of jamabandi revealed the State through Public Works Department to be in possession from the year 1964-65 and the suit land has been shown as gair mumkin road. It was further submitted that this fact was in the knowledge of the Plaintiffs-Appellants and since the suit has been filed after a lapse of about eighteen years, the bar of Article 65 of the Limitation Act, 1963 (for short, "the Act") was straightway attracted. He, thus, prayed that the appeal be dismissed.

7. I have thoughtfully considered the rival contentions/submissions and have gone through the impugned judgment, as also the record.

8. In Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and Another, , the Supreme Court held in paragraph 15 of the judgment as under:

It is, thus, now well settled that any defect in signing the memorandum of appeal or any defect in the authority of the person signing the memorandum of appeal, or the omission to file the vakalatnama executed by the Appellant, along with the appeal, will not invalidate the memorandum of appeal, if such omission or defect is not deliberate and the signing of the appeal memorandum or the presentation thereof before the appellate court was with the knowledge and authority of the Appellant. Such omission or defect being one relatable to procedure, it can subsequently be corrected. It is the duty of the office to verify whether the memorandum of appeal was signed by the Appellant or his authorized agent or pleader holding appropriate vakalatnama. If the office does not point out such defect and the appeal is accepted and proceeded with, it cannot be rejected at

the hearing of the appeal merely by reason of such defect, without giving an opportunity to the Appellant to rectify it. The requirement that the appeal should be signed by the Appellant or his pleader (duly authorized by a vakalatnama executed by the Appellant) is, no doubt, mandatory. But it does not mean that non-compliance should result in automatic rejection of the appeal without giving an opportunity to the Appellant to rectify the defect. If and when the defect is noticed or pointed out, the court should, either on an application by the Appellant or suo motu, permit the Appellant to rectify the defect by either signing the memorandum of appeal or by furnishing the vakalatnama. It should also be kept in view that if the pleader signing the memorandum of appeal has appeared for the party in the trial court, then he need not present a fresh vakalatnama along with the memorandum of appeal, as the vakalatnama in his favour filed in the trial court will be sufficient authority to sign and present the memorandum of appeal having regard to Rule 4(2) of Order 3 Code of Civil Procedure, read with Explanation [c] thereto. In such an event, a mere memo referring to the authority given to him in the trial court may be sufficient. However, filing a fresh vakalatnama with the memo of appeal will always be convenient to facilitate the processing of the appeal by the office.

9. In view of the afore quoted observations, the plea of the learned Counsel for the Respondents that the appeal is not tenable, is misplaced and has to be rejected.

10. The Defendant-Respondent did not raise this objection during the course of the trial as the objection ought to be raised in the first instance when the suit proceeded. At this stage, when the regular second appeal is being considered, to deprive the Appellants of the right of hearing only on this ground would be grossly unjust.

11. The Court now embarks upon to decide the other objection of the Defendant-Respondent with regard to limitation with reference to Article 65 of the Act on the facts of the present case.

12. As per the case of the Appellants in the plaint, the possession of the suit property was taken by the functionaries of the Defendant-Respondent about six years prior to the filing of the suit. However, the revenue record placed on record reveals that the possession was with the Defendant-Respondent since 1964-65, even though, it has been contended on behalf of the Defendant-Respondent that in consolidation proceedings which took place in the year 1962-63, the possession came to be with them. The possession of the suit property was taken for its use for construction of a road for the benefit of the public. As stated above, the revenue record amply justifies the stand taken by the Defendant-Respondent that the possession of the suit property was with them and a road exists therein for the benefit of public and it was even used as such. This fact was to the knowledge of the Appellants right from the beginning yet the suit had been filed after a lapse of eighteen years without there being any effort to retrieve the possession of the suit property and, thus, it was beyond limitation in

terms of Article 65 of the Limitation Act. The Appellants cannot assert their right to possession once the factum of possession being in the hands of Defendant-Respondent is established. This contention of the Defendant-Respondent is, thus, to be accepted rightly as concluded by the first appellate Court.

13. However, the appeal is disposed of with an observation that Appellants shall be free to make a claim for compensation against the Defendant-Respondent and in the eventuality of their proving in legitimate proceedings that the possession of the suit property was taken from them without acquiring the same and without granting any compensation, they shall be entitled to suitable compensation. If such proceedings are initiated, the appropriate Court shall evaluate the claim of the Appellants without being prejudiced by any of the observations which have been made hereinabove and also evaluate the legitimate defences that might be raised by the Respondents, especially the plea of limitation.