
(2015) 08 P&H CK 0203

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 953 of 2014 (OandM)

Hukam Chand and Others

APPELLANT

Vs

Daya Ram and Others

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Evidence Act, 1872 — Section 110
Limitation Act, 1963 — Section 27

Citation : (2015) 180 PLR 776

Hon'ble Judges : K. Kannan, J.

Bench : Single Bench

Advocate : Sanjay Mittal, for the Appellant

Final Decision : Dismissed

Judgement

K. Kannan, J.—The plaintiffs are the appellants before this court. The plaintiffs had filed a suit for injunction claiming themselves to be in possession of a vacant land and sought for mandatory injunction for removal of construction made by defendants 1 to 3. The plaintiffs claim that the defendants usurped the possession of the other portion also during the pendency of the suit. The defendants set up a plea of adverse possession and stated that they had been in possession of the property by putting up construction and enjoying the same for well over the statutory period of 12 years. The suit was originally decreed and the defendants preferred appeals in CA No. 44 of 2012 and Civil Appeal No. 21 of 2012. Both the appeals were allowed dismissing the suit and finding the plaintiffs as having not proved their title in the property and the relief sought for by them cannot be granted. The present appeal is against the judgment in CA No. 21 of 2012 and the counsel says that the decree sheet in appeal No. 44 has not been prepared as yet and hence the appeal was not brought along side the present appeal. The counsel at the first place points out before me that although the appellants are not having any document of title in relation of the property when they sought for injunction both preventive and mandatory, the very fact that the

defendants were making an assertion of right of adverse possession meant that there was an admission of the plaintiffs' right. The Court ought to have, therefore, decreed the suit. I will hold the arguments to be devoid of legal substance. A person who sets up a plea of adverse possession cannot be taken as conceding the title of the plaintiffs and there is no such proposition possible in the way Article 65 of the Limitation Act has been framed. Article 64 of the Limitation Act applies to a suit for recovery of possession based on previous possession and not on title. In such an event, the date of dispossession will be the starting point and such a plaintiff who files the suit on previous possession could do so within a period of 12 years. The point of law is that such a possessory right could be exercised against any person other than the true owner. If the possession is lost to a true owner and the person in possession establishes his title, the recovery of possession could be defeated. Article 65 sets out completely a different principle that a person who files a suit on title, can be defeated in his claim to recover possession, only if the defendant's possession is adverse. The expression used for the commencement of 12 years period in Article 65 is "when the possession of the defendant becomes adverse to the plaintiff". This adverse holding is a component of "animus possidendi" of the defendant, who holds his possession adversely to the whole world including the plaintiff who sues for possession. In other words, the adverse holding is an assertion of intention of possession in denial of right of any person including the true owner. Such a person need not know who the real owner is. His own intention to possess adversely is the only relevant factor. If the defendant holds his possession in assertion of his own right for a period of 12 years, as a property available vacant for his usurpation of possession, a vigilant owner must claim recoveries before the possession of the defendant adversely held does not fructify into a right to fend off the relief for recovery. Section 27 of the Limitation Act would require to be read conjointly, for, it enacts a rule of public policy that on the determination of the period limited to a person for instituting a suit for possession, the right to such property shall be extinguished. An adverse possession for a period of 12 years will cause extinguishment of right of the person who is the owner. Assuming the worst that the defendant is in possession of the property without right and the plaintiff sues for the relief of mandatory injunction to claim recovery when he is unable to prove his own title, the latter is bound to lose. If he cannot prove his title then irrespective of whether the defendant is in possession for 12 years or even less, the suit is bound to fail by application of yet another principle of law which the Evidence Act recognizes under Section 110. Section 110 of the Evidence Act is a re-statement of Roman law principle of the possession being nine points in law. If there is a claim to ownership of any property of which is shown to be in possession of the defendant then the burden of proving that he is not the owner shall be on the person who wants the property to be recovered. A plaintiff who files a suit for mandatory relief of injunction and for removal of construction on the claim that the property belongs to him, literally admits the defendant to be in possession. He cannot secure a mandatory relief without proving that he has got better right than the

defendant. As regards the vacant land, possession invariably follows title. The relief of preventive injunction sought by the plaintiffs in respect of a vacant land could obtain value and credence only if he is able to show that he has title to the property to claim such a relief. If on the showing of plaintiff himself he had no document to prove his title, it is irrelevant that the defendants did not have a document to prove his title. Between the plaintiff and the defendant trying to assert rights, it is the defendants' stand which is more advantageous, for, the plaintiff suing for ejectment of a property which the adversary occupied could succeed only on the strength of his case and not on the weakness of the defendant.

2. The relief of mandatory injunction itself comes within the equitable doctrine statutorily recognized by the Specific Relief Act. A plaintiff cannot have mandatory relief of injunction for removal unless he is a person who shows his right and conduct as requiring assistance from the court. The plaintiff cannot secure such assistance in the absence of any document providing for assertion of his right in the manner canvassed by him before the trial court which he failed to establish. There is no scope for interference as no substantial questions of law are involved. The appeal is dismissed. The Registry is directed that as and when an appeal is filed against the judgment in CA No. 44 of 2012, the same be listed only before this Court.