

(2016) 04 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : R.S.A No. 1073 of 2015

Jeet Singh deceased represented by his L.Rs Varkha Kaur and others APPELLANT

Vs

Ranjeet Singh and others RESPONDENT

Date of Decision : 12-04-2016

Acts Referred:

Citation : (2016) 4 CivCC 28 : (2016) 4 ICC 824 : (2016) 3 PLR 597

Hon'ble Judges : Darshan Singh, J.

Bench : Single Bench

Advocate : Sudhir Mittal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Darshan Singh, J. - The present appeal has been preferred by the appellant-plaintiff against the judgment and decree dated 03.12.2014 passed by the learned Additional District Judge, Kurukshetra, vide which the appeal filed by him against the judgment and decree dated 26.02.2011, passed by the learned Additional Civil Judge (Sr. Division), Peohwa, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. Plaintiff-appellant has filed the suit for declaration to the effect that they are full owners in possession of the suit land measuring 31 Kanals 7 Marlas as detailed and described in the head note of the plaint situated in the revenue estate of village Urnai, Tehsil Pehowa, District Kurukshetra, by way of adverse possession of more than 12 years since the time of their father Babu Singh. They have also sought declaration that the judgment and decree dated 28.11.1984 passed by the learned Senior Sub Judge, Kurukshetra, the judgment and decree dated 23.02.1987 by the learned Additional District Judge, Kurukshetra, order dated 14.12.1999 passed by this Court, the judgment and decree dated 18.07.2000 passed by the learned Additional District Judge, Kurukshetra,

judgment dated 03.08.2001 passed by this Court and consequent execution petitions are illegal, null and void, inoperative, in effective and not bindings on the rights of the plaintiff-appellant. He also sought the consequential relief of permanent injunction.

4. As per the case of the appellant-plaintiff, their father came in possession of the suit property since the year 1954 by way of family settlement with Sant Kaur and Kulwant Singh, father's brother of the plaintiff. The possession of the father of the plaintiff's remained throughout as owner to the knowledge of Sant Kaur and thereafter, Kulwant Singh and the defendants openly, adversely, peacefully, continuously, without any hindrance and interruption. It has been further pleaded that the aforesaid judgment and decrees have been procured by the defendants by producing the fake and misleading evidence in a fraudulent manner by concealing the true facts. Thus, the aforesaid judgments are illegal, null and void and not binding on the rights of the plaintiff. It is further pleaded that the adverse possession of the plaintiff for more than 12 years has ripened into the ownership. Hence, the suit.

5. Defendants no.1 to 4 contested the suit on the grounds inter alia that their father has acquired the suit property on the basis of Will executed by Smt. Sant Kaur. The suit filed by Babu Singh, the father of plaintiff regarding that Will was dismissed. They denied that Babu Singh had become owner of the suit land by way of adverse possession. Rather, his possession has been declared unauthorized vide judgment and decree dated 06.03.1992. It is further pleaded that they had filed a suit for possession against the plaintiff, which was decreed by the Court of learned Additional Senior Sub Judge, Pehowa on 06.03.1992. The first appeal, Regular Second Appeal and the Special Leave Petition filed by the plaintiff have been dismissed. Now, the plaintiff want to delay the execution of the warrant of possession on one ground or the other.

6. Defendants no. 5 and 6 also contested the suit by filing the separate written statement pleading their that they are owner in possession of the suit land. They had filed a suit for specific performance, which was decreed on 03.02.1992. In the appeal, the judgment and decreed dated 03.02.1992 was modified. Thereafter, they preferred Regular Second Appeal No. 884/94 before this Court. All other pleas raised in the plaint were controverted. Thus, they pleaded for dismissal of the suit.

7. From the pleadings of the parties, the following issues were framed by the learned trial Court vide order dated 17.08.2006:-

1. Whether plaintiffs are owners in possession of land mentioned in para no.1 of the plaint by way of adverse possession?OPP
2. Whether judgment/decreed dated 28.11.1984, 23.2.1987, 18.07.2000, 03.08.2001, 3.2.1992, 6.3.1992 and order dated 14.12.1999 are illegal, null and void and liable to be set aside on the grounds mentioned in the plaint?OPP

3. Whether the plaintiffs are entitled to decree for permanent injunction as prayed for?OPP
4. Whether the suit is not maintainable?OPD
5. Whether plaintiffs have no locus standi and cause of action to file the present suit?OPD
6. Whether suit is barred under Order 2, Rule 2 CPC?OPD
7. Whether suit is barred by principle of resjudicata?OPD
8. Whether the plaintiffs have concealed the true and material facts from the Court?OPD
9. Whether this Court has no jurisdiction to entertain and try this suit?OPD
10. Relief.

8. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court dismissed the suit filed by the appellant-plaintiff, vide impugned judgment and decree dated 26.02.2011.

9. Appellants-plaintiffs preferred the appeal. The same has also been dismissed by the learned First Appellate Court, vide impugned judgment and decree dated 03.12.2014. Hence this Regular Second Appeal.

10. I have heard Mr. Rainer Goyal, Advocate, learned counsel for the appellants, Mr. Sudhir Mittal, Advocate, learned counsel for the respondents no. 5 and 6 and have meticulously gone through the paper book.

11. The appellants-plaintiff through LR's is claiming that he has become the owner of the suit property by way of adverse possession since the time of his father and resultantly, he has challenged various judgments and decrees passed in the previous litigation. The basic declaration sought by the appellants-plaintiff in the present case is that he has become the owner of the suit land by way of adverse possession. So, the substantial question of law, which arises for determination is as under:-

1. Whether the appellant-plaintiff's can claim declaration that he had become the owner in possession of the suit property by way of adverse possession in the present suit filed by him?

12. Learned counsel for the appellant contended that the stand of the defendants had remained contradictory in the previous litigation as sometime, they have been alleging themselves to be in possession of the suit property and they have also filed the suit for possession. He contended that the appellant-plaintiff's have become owner of the suit property by way of adverse possession. The judgments and decrees passed in the previous litigation, which are based on false evidence, misrepresentation and concealment of true facts are not binding on the rights of the appellant.

13. On the other hand, learned counsel for the respondents no. 5 and 6 contended that the suit for declaration filed by the plaintiff's claiming ownership on the basis of adverse possession is not maintainable. To support his contentions, he has relied upon case Gurdwara Sahib v. Gram Panchayat Village Sirthala and another (2014) 1 Supreme Court Cases 669. He further contended that the previous judgments have become final and cannot be challenged in this suit.

14. I have duly considered the aforesaid contentions.

15. The entire case of the appellant-plaintiff is based on the plea raised by him that he has become the owner of the suit property by way of adverse possession. He has alleged that prior to him, his father Babu Singh was in adverse possession of the suit property. But, the plea of adverse possession raised by the father of the appellant was already rejected in civil suit no. 1095 of 1990, titled as Ranjit Singh and another v. Babu Singh etc. on 06.03.1992. Against that judgment and decree, plaintiff's father had gone up to the Hon'ble Apex Court, but without any success. The present appellant-plaintiff is also claiming through his father Babu Singh. In the present suit also, he has taken the similar pleas as was taken by his father in the previous litigation. Thus, the judgment and decrees passed in the previous litigation which have attained finality cannot be re-agitated. Moreover, the only basis to assail those decrees is the declaration sought by the appellant-plaintiff that he has become the owner of the suit property by way of adverse possession. This plea raised by the appellant-plaintiff is not tenable on two grounds. Firstly, the same plea raised by his father Babu Singh through whom he is claiming the right in the suit property has been rejected in civil suit no. 1095 of 1990, titled as Ranjit Singh and another v. Babu Singh etc.

16. Secondly, the suit for declaration claiming ownership on the basis of adverse possession is not maintainable as the plea of adverse possession is available only as a defence. It cannot be used as a sword. This Court in case Bhim Singh and others v. Zile Singh and others 2006(3) R.C.R (Civil) 97 has laid down as under:-

"Under Article 64 of the Limitation Act, as suit for possession of immovable property by a plaintiff, who while in possession of the property had been dispossessed from such possession, when such suit is based on previous possession and not based on title, can be filed within 12 years from the date of dispossession. Under Article 65 of the Limitation Act, a suit for possession of immovable property or any interest therein, based on title, can be field by a person claiming title within 12 years. The limitation under this Article commences from the date when the possession of the defendant becomes adverse to the plaintiff. In these circumstances, it is apparent that to contest a suit for possession, filed by a person on the basis of his title, a plea of adverse possession can be taken by a defendant who is in hostile, continuous and open possession, to the knowledge of the true owner, if such a person has remained in possession for a period of 12 years. It, thus, naturally has to be inferred that

plea of adverse possession is a defence available only to a defendant. This conclusion of mine is further strengthened from the language used in Article 65, wherein, in column 3 it has been specifically mentioned "when the possession of the defendant becomes adverse to the plaintiff." Thus, a perusal of the aforesaid Article 65 shows that the plea is available only to a defendant against a plaintiff. In these circumstances, natural inference must follow that when such a plea of adverse possession is only available to a defendant, then no declaration can be sought by a plaintiff with regard to his ownership on the basis of an adverse possession."

17. Similar ratio of law has been reiterated by Coordinate Benches of this Court in cases *Joginder Kaur v. Gurbachan Kaur and others* 2013(6) R.C.R (Civil) 685 and *Suresh and others v. Parveen Kumar and another* 2012(4) R.C.R (Civil) 163. The Hon"ble Apex Court also in *Gurdwara Sahib's* case (Supra) has laid down as under:-

"There cannot be any quarrel to this extent the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence."

Thus, in view of the consistent ratio of law laid down in the cases referred above, the suit filed by the plaintiff for claiming declaration that he has become owner of the suit land on the basis of adverse possession was not maintainable. Thus, the aforesaid question of law is answered against the appellant.

18. Consequently, the concurrent findings recorded by the learned Courts below does not call for any interference by this Court exercising the limited jurisdiction in the Regular Second Appeal.

19. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.