
(2008) 11 P&H CK 0088

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3643 of 2006

Main Pal and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 07-11-2008

Acts Referred:

Citation : (2009) 5 RCR(Civil) 834

Hon'ble Judges : Rakesh Kumar Jain, J

Advocate : Mr. R.C. Chaudhary, Advocate. Ms. Mamta Singla Talwar, AAG
Haryana., Advocates for appearing Parties

Judgement

Rakesh Kumar Jain, J.

1. This is an appeal filed by the plaintiffs against the judgment and decree of the trial Court dated 18.2.2005 by which the suit of the plaintiffs was dismissed and against the judgment and decree of the District Judge, Yamuna Nagar dated 3.4.2006 by which the appeal filed by the plaintiffs was dismissed and judgment and decree of the trial Court was upheld.

2. Tersely, the plaintiffs filed a suit against State of Haryana and others seeking a decree for permanent injunction restraining them from interfering in their possession or ousting them illegally or forcibly from the house and shop constructed on the land measuring 92 Kanals 1 Marla bearing Khewat No. 226 min Khatauni No. 293 min Khasra No. 231/2, situated in village Tajewala HB No. 3, Tehsil Chhachhrauli District Yamuna Nagar. The plaintiffs have claimed that they have constructed their houses in the suit land and are in possession for more than 50 years without any interruption. Their possession being hostile and peaceful, had matured in adverse possession to which State of Haryana had never objected to and therefore, entries in the revenue record are illegal and erroneous. In the written statement, it was pleaded by the defendant that appellants have constructed their houses about 34 years back without the permission of the State of Haryana for which the Authorities have filed a suit against the plaintiff in the Court of Collector, Yamuna Nagar under Sections 4, 5

and 6 of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 in which the Collector, Jagadhari had passed the order of their eviction vide orders Ex.D2 and Ex.D3 and their appeals were dismissed by the Commissioner, Ambala Division, Ambala on 3.12.2002. The said order of eviction has not been challenged by the plaintiffs which had attained finality by efflux of time. It is also the case of the defendant that plaintiffs have deliberately concealed the fact from the Court that the appeal filed by them before the Commissioner, Ambala Division, Ambala has already been dismissed on 3.12.2002. On these premises, it was claimed that the plaintiffs are not entitled to any discretionary relief of injunction.

3. Sh. R.C. Chaudhary, learned counsel for the appellants has vehemently contended that the plaintiffs are in possession over the suit land for the last 50 years and therefore, they have become owners by virtue of their adverse possession. Learned counsel for the appellants has also stated that one of the substantial questions involved in this appeal is "as to whether the plaintiffs have become owners by way of adverse possession."

4. On the other hand, Ms. Mamta Singla Talwar, AAG Haryana has contended that plea of adverse possession is not available to the plaintiffs in view of a decision of this Court in the case of Bhim Singh and others v. Zile Singh and others, 2006(3) RCR(Civil) 97 (P&H) in which it has been held that when the owners seek possession of the immovable property, the plea of adverse possession can be raised in defence but the relief of declaration that the plaintiff has become the owner, cannot be granted on the basis of adverse possession.

5. I have heard learned counsel for the parties and have perused the record carefully.

6. In view of the law laid down by this Court in the case of Bhim Singh and others (supra), I do not find any question of law much less substantial arises in the present appeal. Moreover, the plaintiffs are not entitled to any discretionary relief of injunction for the reason that they are guilty of suppression of material facts from the Court as they had concealed the fact that their appeal filed before the Commissioner, Ambala Division, Ambala was dismissed on 3.12.2002. In this regard, the Apex Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs v. Jagannath (dead) by L.Rs. and others, 1994(1) RRR 253 : AIR 1994 SC 853 has held that if a party to the litigation is guilty of the suppression of material facts from the Court then his case deserves to be thrown at the threshold and no equitable relief should be granted to such a party.

In view of the above, I do not find any merit in the present appeal and thus, the same is hereby dismissed. However, there shall be no order as to costs.