

(2014) 08 P&H CK 0137
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 2194 of 2013 (O&M)

Onkar Singh

APPELLANT

Vs

Balwinder Singh

RESPONDENT

Date of Decision : 12-08-2014

Acts Referred:

Citation : (2014) 08 P&H CK 0137

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Anil Kshetarpal, Senior Advocate and Aditya Kochar, Advocate for the Appellant; S.S. Dinarpur, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—The plaintiffs are before this Court against the judgment and decree of the learned Lower Appellate Court whereby that of the learned Trial Court was reversed and the suit filed by them was dismissed.

2. Learned counsel for the appellants-plaintiffs submitted that the respondents entered into an agreement to sell for the land in question with the appellants on 20.12.1982 for a total consideration of Rs. 2,82,662/-. The last date for registration of sale-deed was fixed as 15.3.1983. It was extended upto 31.8.1983. The suit for declaration was filed by the appellants on 18.3.1983 claiming themselves to be the owners of the land in dispute and for permanent injunction restraining the respondents-defendants from interfering into their possession as the appellants had been put in possession of the land after execution of the aforesaid agreement to sell. The decree for permanent injunction was granted. Subsequently, another suit was filed by the appellants on 9.8.1983 claiming ownership of the same land pleading that it is on account of exchange with some other land located in Saharnpur. Plea for adverse possessions was also taken. The suit was dismissed on 15.10.1983. The judgment and decree was upheld by the first Appellate Court on 13.6.1985. Even RSA No. 2837 of 1985 Onkar Singh vs. Balwinder Singh and others was

dismissed by this Court on 23.5.2012. During the pendency of aforesaid appeal before this Court the suit in question was filed on 19.8.2004 claiming ownership on the basis of adverse possession. The trial court decreed the suit. However, the learned Lower Appellate Court reversed the judgment and decree of the trial court and dismissed the suit. It is the aforesaid judgment and decree of the learned Lower Appellate Court which has been impugned in the present appeal.

3. It was further submitted by the learned counsel for the appellants that the learned Appellate Court had gone wrong in opining that the suit for declaration as owner on the basis of adverse possession was not maintainable. No doubt, earlier this view was taken by this Court, however, the matter has been referred to a Division Bench. He further submitted that the earlier litigation between the parties will have of no effect as it has been opined by this Court while dismissing RSA No. 2837 of 1985 that the complete pleadings were not available in the suit.

4. On the other hand, learned counsel for the respondents submitted that as far as the ownership of the land of the respondents is concerned, there is no dispute. The appellants have failed twice seeking ownership of the land. Plea of adverse possession cannot be raised by the plaintiffs. It can only be a weapon of defence. Even otherwise, once on the same very plea, the appellants filed suit in the year 1983 and the matter came upto this Court in RSA No. 2837 of 1985, which was dismissed on 23.5.2012, the appellants cannot be permitted to raise the same plea again and again. In fact, the appellants had been misusing the process of law. As during the pendency of the aforesaid appeal before this Court, he filed the present suit on 19.8.2004 seeking declaration as owner on the plea of adverse possession when earlier the appellants had filed suit on the same account and RSA No. 2837 of 1985 was pending in this Court.

5. Heard learned counsel for the parties and perused the paper book.

6. The plea of the appellants in the suit filed by them is to declare them as owner in possession of the suit land on the basis of adverse possession. It is not in dispute that taking the same plea, the appellants had earlier filed a suit on 9.8.1983 which was dismissed on 15.10.1983. First appeal against the same was dismissed on 13.6.1985 (Ex. P6) and RSA No. 2837 of 1985 was dismissed by this Court on 23.5.2012. While dismissing the appeal on the issue of adverse possession, this Court observed as under:-

"So far as the plea of plaintiffs that they had become owners on the basis of adverse possession is concerned, the same had not been properly pleaded by plaintiffs nor it had been established by them. It was not pleaded by plaintiffs that their possession over the suit property was hostile. No revenue record had been proved on record to establish the continuous possession of plaintiffs over the suit land for the last more than 12 years over the suit property and in what capacity they were in possession of the suit land."

7. Once the appellants had already failed upto this Court claiming ownership on the basis of adverse possession, the same issue cannot be permitted to be raised

time and again. In fact, it amounts to misuse of process of law. The plea that in the earlier litigation, the appellants failed on account of proper pleadings, hence could raise the issue again is totally misconceived. Still further Hon"ble the Supreme Court in Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and Another, opined that declaration cannot be sought to the effect that the adverse possession has matured into ownership. It can only be used as a weapon of defence. Relevant para thereof is extracted below:-

"7. In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable. 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."

8. As in the case in hand, besides failing in the earlier round of litigation on the same ground, in the present round of litigation also the appellants-plaintiffs claimed ownership on the basis of adverse possession, the suit filed by them was not maintainable, and hence, has rightly been dismissed by the learned Lower Appellate Court.

9. No substantial question of law arises.

10. The appeal is dismissed.