
(1996) 08 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Civil Regular Second Appeal No. 2556 of 1992

Ram Dhari

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 09-08-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1997) 116 PLR 353

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Rajesh Choudhary, for the Appellant; Azad Singh, AAG, for the Respondent

Judgement

R.L. Anand, J.—Unsuccessful plaintiffs Ram Dhari and others have filed the present R.S.A. and it has been directed against the judgment and decree dated 18.9.1992 passed by the Additional District Judge, Jind, who accepted the appeal and set aside the judgment and decree dated 28.9.1991 passed by the Court of Sub Judge 1st Class, Narwana and dismissed the suit of the plaintiffs-appellants for declaration and injunction as prayed for.

2. Brief facts of the case are that the plaintiffs-appellants Ram Dhari and others filed a suit for declaration and for permanent injunction, alleging that they had been cultivating the suit land for the last more than 40 years without payment of Batai and Chakota, which land was previously owned by Nathu, Neki and Panna sons of Sheo Ram, resident of village Ghaso Kalan. It was pleaded that the whereabouts of these brothers have not been known for the last 40 years and as such they are dead in the eyes of law. The plaintiffs have become the owners and in possession of the suit land by way of adverse possession, it was also alleged that Nathu, Panna and Neki are being shown in the revenue record as owners and this entry is illegal, null and void and is liable to be corrected. The case further pleaded by the plaintiffs-appellants is that the order dated 16.6.1986 passed by the Collector, District Jind, vide which the suit land is ordered to be

vested in the State by way of escheat is also bad in the eyes of law and is null and void and it does not affect the rights of the plaintiffs in spite of the fact that the Collector admitted the ownership of the plaintiffs by way of adverse possession but refused to sanction mutation in their favour. It was also pleaded by the plaintiffs-appellants that defendant No. 1 was adamant to take possession of the suit land and wanted to dispossess the plaintiffs.

3. It is also pleaded by the plaintiffs that Jeet Ram, defendant No. 2 is claiming title to the suit land being the legal heir of Nathu, Neki and Panna. In fact defendants Nos. 2 to 6 are not the legal heirs of these persons and mutations Nos. 785, 786 and 787 in favour of defendant No. 2 are also wrong, illegal, null and void and without jurisdiction. Defendant Nos. 1 and 2, i.e. the State of Haryana and Jeet Ram were repeatedly requested to admit the claim of the plaintiffs but they refused to do so.

4. The suit was contested by the defendants. The defence of defendant No. 1 i.e., the State of Haryana, was that the plaintiffs never became the owners of the suit land by way of adverse possession. This land was previously owned by Neki, Panna and Nathu, whose whereabouts are not known for the last 40 years and they had died a civil death. After the death of these persons the State became the owner and in possession of the suit land and order regarding escheat was passed on 16.6.1986 in a legal manner. Defendant No. 1 also alleged that defendant No. 2 Jeet Ram had no right, title or concern with the suit land. Also it was the stand of defendant No. 1 that the suit of the plaintiffs is not maintainable; that they have no cause of action; that they have no locus standi to file the suit and that the suit is bad for want of notice u/s 80 C.P.C.

5. Defendant No. 2 filed separate written statement and he contested the suit alleging that the Assistant Collector 1st Grade vide order dated 31.5.1986, after admitting the ownership of the legal heirs of Nathu, Panna and Neki, had sanctioned the mutation in his favour and since then he has become the owner of the land in suit. Neither the plaintiffs nor defendant No. 1 has any concern with the land. The order dated 16.6.1986 by which the suit land has been escheated and vested in the State Government is illegal, null and void. It is also pleaded that the appeal was filed against the order dated 31.5.1986, which is still pending. The plaintiffs in collusion with the Assistant Collector IInd Grade, Uchana, got the Khasra Girdawaries in their favour sanctioned. In fact, the Assistant Collector IInd Grade was not competent to correct the Khasra Girdawari. Therefore, the order is illegal, null and void and not binding upon the rights of defendant No. 2. Legal objections were also taken by this defendant that the suit of the plaintiffs is not maintainable; that it is not properly valued for the purpose of court fee and jurisdiction.

6. The plaintiffs filed replication to the written statement in which they reiterated their allegations made in the plaint by denying those of the written statement and from the pleadings of the parties, the trial Court framed the following issues :-

1. Whether the order dated 16.6.1986 passed by the Collector, Jind, in case No. 122/EDC dated 5.3.1986 titled as Ram Dhari etc. v. Jeet Ram etc. is null and void and not binding on the plaintiff as alleged ? OPP.
2. If issue No. 1 is proved, then whether plaintiffs have become owners of the suit land by way of adverse possession ? OPP.
3. Whether the suit is not maintainable in the present form? OPD.
4. Whether the plaintiffs have got no locus standi to file the suit ? OPD.
5. Whether the suit is bad for want of notice u/s 80 CPC ? OPD.
6. Whether the plaintiffs have got no cause of action to file the suit ? OPD.
7. Whether the suit is undervalued for the purposes of court fees and jurisdiction ? OPD.
8. Relief.

Following additional issue 1-A was framed on 5.9.1991:-

- 1-A. Whether written statement on behalf of defendant set No. 1 not properly verified ? OPD.

The parties led oral and documentary evidence in support of their case and on the conclusion of the trial, the learned trial Court vide paras Nos. 10 and 11 of the judgment dated 28.9.1991 decreed the suit of the plaintiffs-appellants and it will be useful for me to incorporate these paras in order to appreciate the controversy involved in this appeal as I am of the considered opinion that there was a misreading of the evidence on the part of the learned trial Court and for that reason the said judgment and decree was rightly set aside by the first appellate Court :-

"10. Adverse possession refers to prove: 1. Actual and exclusive possession; 2. Except with intention to hold as owner; 3. Accompanied with such invasion of the right of true owner as gives the latter cause of action to sue for recovery of possession at once.

11. Adverse possession becomes hostile to the rightful owner when a person openly and continuously possesses his land as under a claim of right adverse to the title of true owner for the statutory period. His belief that land did not belong to the true owner is immaterial. Therefore, such possession must be actual and exclusive under a claim of right adequate in continuity in publicity and in extent, so as to show that it is adverse to the true owner. Coming to the case of plaintiff, in order to show that they had been in continuous possession over the suit land produced jamabandi for the year 1955-56 and Khasra Girdawari from 3.10.1952 to 14.3.1956 (Ex.P-1), 31.10.1956 to 6.3.1960 (Ex.P-3), 9.11.1960 to 30.10.64 (Ex.P7) and Nehri Girdawari (Ex.P8), Ex.P9 and Ex.P-10 showing cultivation of the plaintiff as Gair Maurusi tenant without the payment of lagan. Khasra Girdawari from 10.10.1986 to 6.3.1988 (Ex.P-4), Khasra Girdawari from

28.10.1964 to 17.3.1966 are not shown in the name of plaintiff but there is no such evidence on the file regarding the change of these khasra girdawaries without notice to the plaintiffs who have been continuously coming as a cultivator over the suit land for more than twelve years. Change of Kharsa girdawaries without notice to the plaintiff does not affect the right of plaintiffs. It is clearly established by the oral as well as the documentary evidence produced by the plaintiff that they had been coming in possession over the suit land for the last thirty years which was previously owned by Nathu, Panna and Neki. Plaintiffs have also challenged the order of Collector dated 16.6.1986, by which suit land was vested in the State Government. To become, the State Government as owner of the suit land in the pursuance of order dated 16.6.1986 does not affect the right of plaintiff who had been in possession over the suit land for more than twelve years before the State Government became the owner in possession over the suit land. Therefore, this order is also illegal, null and void and is not binding on the rights of plaintiff. Plaintiff examined Bhag Chand son of Amar Singh as PW1, Pala Ram as PW2 who fully supported the case of plaintiff. On the other hand, defendant did not put any suggestion to the" plaintiff neither to his witnesses that they have not become the owner in possession over the suit land by way of adverse possession. When no suggestion was put up to the plaintiff by the defendant, it is presumed that the defendants have admitted the claim of plaintiff. From the oral evidence coupled with documentary evidence produced by the plaintiff, it is clearly established that they have become the owner in possession over the suit land by way of adverse possession. Consequently, I decide both these issues in favour of plaintiff and against the defendant."

7. Defendant No. 2 did not contest the findings of the trial Court nor any separate appeal was filed. However, defendant No. 1 State of Haryana filed first appeal in the Court of Additional District Judge, Jind, who vide the impugned judgment and decree dated 18.9.1992 set aside the judgment and decree of the trial Court, allowed the appeal and dismissed the suit of the plaintiffs. The operative part of the judgment of the first appellate Court is contained in paras Nos. 14 to 19 of the said judgment, which are also reproduced as under in order to assess that the evidence led by the parties has been rightly discussed and appreciated by the first appellate Court :-

"14. In order to succeed on a plea of adverse possession, plaintiffs were required to prove various essential ingredients constituting adverse possession and in a Division Bench authority of our Hon"ble High Court Ramlal and Others Vs. Chetu alias Chet Ram and Others, , their Lordships have laid down various ingredients for proving adverse possession in these words, "Adverse possession, as the words imply, must be actual possession of another's land with intention to hold it and claim it as his own. It must commence with the wrongful dispossession of the rightful owner at some particular time; it must commence in wrong and must be maintained against right. It must be actual, open, notorious, hostile under claim of right, continuous and exclusive and maintained for the statutory period. Indeed it should be so open and exclusive as to leave no doubt as to the

intention of the occupant, so notorious that the owners may be presumed to have knowledge of the adverse claim and so continuous as to furnish a cause of action every day during the required period.

15. In order to succeed on the plea of adverse possession it was essential for the plaintiffs to prove this fact that they were asserting any hostile title to the suit properly to the knowledge of the true owners as such and such time before institution of the suit. Such assertion against true owners is not pleaded. Neither such assertion, against the Government is pleaded nor proved. In authority The State Bank of Travancore Vs. Aravindan Kunju Panicker and Others, in para No. 9 at page 998, their Lordships of Honble Supreme Court have observed as under:

"A permissive possession cannot be controverted into an adverse possession unless it is proved that the person in possession asserted an ALLAHABAD HIGH COURT adverse title to the property to the knowledge of true owners for a period of twelve years or more. There is no evidence to show that either Krishnan or Vellu or Kuruvilla asserted any hostile title to the suit property to the knowledge of the true owners at any time before the present suit."

16. From the evidence adduced, it has transpired that the plaintiffs or defendants set No. 2 are not proved owners of the suit land. Title to the suit land is not disclosed in them. Neither any legal heirs of the true owners who are presumed to be dead in the eyes of law is proved. Consequently, suit land is devolved upon the Government and the impugned order Ex.P-11 dated 11.6.1986 passed by the Collector, Jind is valid and legal order. Same is speaking order. In other words, Haryana Government is proved owner of the suit land and the plaintiffs have, miserably failed to prove this fact that they have perfected title against the Government, a rightful owner now of the suit land by operation of law.

17. Learned counsel for plaintiff-respondents has submitted that Nehri girdawari is also relevant and indicates possession of the plaintiffs over the suit land and so possession of the plaintiffs over the suit land in the year 1982-83 and in the year 1984-85 as is clear from Ex.P-9 and P-8 is proved. Authority Narain Dass and Ors. v. Chetan Dass 1987 PLJ 99, has been cited before me. No doubt entries in Nehri girdawari are also relevant but the possession of the plaintiffs over the suit land prior to Kharif 1988 is not proved by any cogent evidence.

18. Learned counsel for the plaintiff-respondents has also submitted that facts asserted by the plaintiffs in the plaint regarding missing of Nathu, Panna and Neki for the last 40 years and cultivation of the suit land for the last 40 years by the plaintiffs are not specifically denied in the written statement by defendant No. 1 and as such same are accepted as correct. In support of his contention learned counsel for the plaintiffs has cited before me authorities Om Parkash v. Dodewala Coop. Agricultural Service Society (1982) 84 P.L.R. 697. As far as legal proposition is concerned, there is no dispute. A perusal of the written statement filed by defendant No. 1 fully reveals that the possession of the plaintiffs over the suit land is specifically controverted. Possession of true owners is asserted.

19. Then it is also submitted that statement of Ramdhari has been assailed in cross-examination and in view of the authority *Traders Syndicate Vs. Union of India (UOI)*, , statement of Ramdhari plaintiff PW3 to the effect that his father took possession of the suit land forcibly has been accepted as correct but again at the cost of repetition, it may be mentioned that there is no such pleadings and evidence beyond pleadings is liable to be excluded from consideration and as such no cross-examination of the plaintiff on this point was required. There is no consistency in oral and documentary evidence adduced by the plaintiffs to prove their adverse possession. Consequently, in my considered opinion, learned Sub Judge has not rightly recorded findings on issue Nos. 1 and 2 in favour of the plaintiffs against the defendants and that findings on these issues is reversed and same are decided in favour of the defendant-appellant and against the plaintiff-respondents."

8. This time the plaintiffs have filed the present R.S.A., which is being disposed of with the help of Shri Rajesh Chaudhary, Advocate, learned counsel appearing on behalf of the appellants, and Shri Azad Singh, learned Assistant Advocate General, Haryana, and with their assistance have gone through the record of this case.

9. The sensitive controversy involved in this appeal was as to whether the plaintiffs had become owners by way of adverse possession of the suit land. So far as the principle of law is concerned, it must be stated here that both the trial Court as well as the first appellate Court rightly understood. However, the learned trial Court has misread the evidence led by the plaintiffs and wrongly come to the conclusion that the plaintiffs have not been able to prove their continuous and hostile possession for the last more than 12 years before the passing of the order dated 16.6.1986 when the land in question vested in the State Government by way of escheat. Their possession had ripened into title and for this reason the State did not acquire any better title and the order dated 16.6.1986 does not confer the ownership right on defendant No. 1. It may also be stated here that both the Courts below had omitted to notice one thing that though the possession of the plaintiffs was not proved hostile or adverse for the statutory period of 12 years/30 years, still it is proved on the record that the plaintiffs were in established possession of the property and they could only be evicted in a legal manner. Both the Courts have not taken care of the fact that the plaintiffs have not only filed a suit for declaration but also filed suit for injunction that their possession should not be disturbed by the defendants. No doubt the plaintiffs were not entitled to a decree of declaration on the basis of the alleged possession, yet the first appellate Court ought to have granted a decree for injunction in order to protect the possession of the plaintiffs, which possession could only be disturbed by defendant No. 1 in a legal manner. This relief I would like to give to the plaintiffs-appellants in the subsequent portion of this judgment, but at this stage I would like to discuss the submissions raised by the learned counsel for the parties in order to show that the plaintiffs have not been able to prove their alleged adverse possession right from 1955-1956, as

pleaded by them.

10. It is a settled law that the party whose possession was permissive cannot claim title on the basis of adverse possession unless he shows specific overt act and assertion on his part that he disclaimed the title of the true owner. He must allege and prove that as to when and under what circumstances his possession became adverse. This requires a definite overt act and assertion on the part of such party. In the present case this has neither been pleaded nor proved by the plaintiffs and for this reason this Court is of the view that the plaintiffs have not been able to make out a case for adverse possession.

11. The primary document which has been relied upon by the appellants and by the trial Court in order to establish adverse possession of the plaintiffs is Exhibit P1, which is the Jamabadi for the year 1955-56. A perusal of the same would show that in the column of "ownership" the names of Nathu, Neki and Panna figure. In the column of "cultivation" the names of predecessors of the plaintiffs appear as Ghair Maurusi. In column No. 8 the nature of possession of the plaintiffs has been shown and this entry is very material for both the parties. It has been stated that the predecessors of the plaintiffs are in possession of the suit land on account of Bawaja Baradari. Thus the reading of this document would show that the possession of the predecessors of the plaintiffs was permissive and it was never hostile to the original owners. The next document which has been relied upon by the plaintiffs is Exhibit P2, which is the Jamabandi for the year 1963-64. This is a Nehri Girdawari and in the column of "ownership" the names of Nathu, Neki and Panna again appear. In column No. 5, i.e., the column of "cultivation" the land has been shown as "Khud Kashat - Makbuza Malkan". Thus again this Jamabandi does not help the plaintiffs to prove their adverse possession. The third document which has been relied upon by the plaintiffs is the Khasra Girdawari starting from the year-1952 to 1956. In the column of "ownership" the names of Nathu, Neki and Panna figure and in the column of "cultivation" names of Dattu etc. stand. But there is no entry that the possession of the predecessors of the plaintiffs was ever adverse against the plaintiffs. When the names of ownerships in the column of cultivation" figured, the plaintiffs never made any application to the revenue authorities for the correction of the Khasra Girdawaries. Even the document (Exhibit P5), which is the Khasra Girdawari starting from the year 1956-57 to 1959-60, only establishes the possession of the predecessors of the plaintiffs, but not that they are-holding the land as adverse owner. Again in the Khasra Girdawari (Exhibit P6) starting from 1964 to 1996, the names of the owners in the column of "cultivation" stand. In Exhibit P7 the names of the predecessors of the plaintiffs stand. Exhibit P8 is the Nehri Khasra Girdawari, which again establishes the possession of the plaintiffs or the plaintiffs" predecessors. In the Jamabandi (Exhibit P10) for the year 1980-81 the land has been shown in the self-cultivation of the original owners. From these documents it appears that there are conflicting entries with regard to the possession, as the case of both the parties is consistent that the original owners have not been heard of for more

than last 40 years and for this reason defendant No. 1 claims property by way of escheat, while the plaintiffs are claiming ownership on the basis of the alleged adverse possession. In this case the original owners have met with a civil death. Mere long possession on the part of the plaintiffs will not give them the right to say that their alleged adverse possession started 40 years back to the knowledge of the alleged owners. No revenue entry supports their contention because the basic entry is Exhibit PI, which shows that the predecessors of the plaintiffs entered into the suit land in a permissive manner and on account of the brotherhood of the original owners. The trial Court has misinterpreted the evidence, while the first appellate Court rightly appreciated the evidence and I endorse the reasons of the first appellate Court, already reproduced in this judgment.

12. Learned counsel for the appellants has placed reliance on *Om Parkash v. Dadewala Coop. Agricultural Service* (1982) 84 P.L.R. 697, and submitted that the written statement filed by defendant No. 1 was vague. The plaintiffs have specifically alleged in the plaint that they have become the owners of the suit land by way of adverse possession and this part of the allegations has not been specifically denied and, therefore, it shall be presumed to be admitted that defendant No. 1 admits that the plaintiffs have become the owners of the suit land by way of adverse possession.

13. The argument is devoid of any merit. Firstly, in para No. 1 of the written statement of the State, it has been specifically stated that the plaintiffs are not the owners of the suit land by way of adverse possession; rather the State has become the owner by way of escheat. Secondly, the State became the owner of the land on 16.6.1986. Earlier to that the plaintiffs have not been able to prove by leading cogent or reliable evidence that their possession was hostile to the true owners or it ripened into total. If that is so, the plaintiffs have to show that their possession against the State was adverse and hostile for the last more than 30 years. This is not the case of the plaintiffs nor it is proved as such. This authority is not applicable to the facts in hand in view of the specific and categorical denial by defendant No. 1.

14. The revenue record which has been produced by both the parties on the record shows that the plaintiffs were in possession of the suit land on the date of the institution of the suit. Though they claimed that they were in possession as owners, but the plea of adverse possession has already failed, as rightly held by the first appellate Court and this Court is also of the view that the plaintiffs have not been able to make out a case of adverse possession irrespective of the fact that they have been able to show their established possession over the suit land. -The State though became owner of the suit land cannot forcibly evict the plaintiffs and they will have to adopt the legal remedy. Both the Courts have not seen the suit from that angle. The plaintiffs have made a specific prayer with regard to injunction that they should not be evicted from the suit land except in due course of law.

Resultantly, I partly allow this appeal and modify the judgment and decree of the Courts below. The declaration as prayed for by the plaintiffs-appellants is declined. However, their suit for permanent injunction restraining the defendants that they should not be evicted except in due course of law is hereby decreed with no order as to costs.

For the sake of clarification it is declared that the State is the owner of the suit land vide order dated 16.6.1986.