

(1991) 11 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2364 of 1989

Savitri and Others

APPELLANT

Vs

Manphool and Others

RESPONDENT

Date of Decision : 25-11-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (1992) 101 PLR 108

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : P.K. Mutneja, for the Appellant; P.K. Palli and R.K. Gupta, for the Respondent

Judgement

G.R. Majithia, J.—The defendants have come up in regular second appeal against the judgment and decree of the first appellate Court reversing on appeal those of the trial Judge and decreeing the suit of the plaintiff-respondents for declaration that they were owners-in-possession of the suit land.

2. The facts:-

Slier Singh and Partap Singh, sons of Lachhman were the owners of the suit land, part of which is situated in village Naguran and part in village Nheri Naguran; that they left the village and settled in Jind in 1950 and since then the plaintiff-respondents (hereinafter the plaintiffs) had been in possession as owners thereof without payment of any batai, rent or other charges to the defendant-appellants (hereinafter the defendants); that their possession had been continuous, open, hostile and to the knowledge of the defendants and, thus, they had become its owners by adverse possession.

3. The suit was contested by defendant-appellant No. 1 and she took preliminary objection that the suit was not maintainable in the present form ; that the suit was bad for mis joinder of parties and cause of action. The allegation that the plaintiffs had become owners by adverse possession was controverted.

4. On the pleadings of the parties, the following issues were framed :-

(1) Whether the plaintiffs have become the owners of the suit land by way of adverse possession in accordance with shares as detailed in the head-note of the plaint ? O. P. P.

(2) Whether the suit is not maintainable in the present form ? O. P. D.

(3) Whether the suit is bad for mis-joinder of parties and causes of action ? O. P. D.

(4) Relief.

5. The trial Judge decided issue No. 1 against the plaintiffs ; issues No. 2 and 3 were decided against the defendants since they were not pressed and, on ultimate analysis, the suit was dismissed.

6. On appeal, the first appellate Court, on appraisal of the evidence brought on record, reversed the finding of the trial Judge under issue No. 1 and held that the plaintiffs had perfected their title over the suit land by adverse possession.

7. Defendant No. 1 and the legal representatives of defendant No. 2 Partap Singh have come up in this regular second appeal.

8. At the time of hearing of the appeal, an application was filed in Court by the plaintiffs seeking permission to withdraw the appeal with permission to file fresh suit on the same cause of action. It was pleaded in the application that material facts were not pleaded in the plaint and that documentary evidence, viz., sanctioning of mutation in 1908 by which the name of the predecessor-in-interest of the defendants was removed from the revenue record, having remained absent from the village for a long time, was not brought on record. The application was opposed by the learned counsel for the defendants.

9. After examining the same, I am not satisfied that the suit is likely to fail on account of some technical or procedural error. The application is accordingly dismissed. The office is directed to register this application.

10. Learned counsel for the appellants challenges the finding of the first appellate Court under issue No. 1. While examining the record of the first appellate Court, it came to my notice that the plaintiffs moved an application under Order 41, rule 27, CPC (for short, the Code) in the first appellate Court seeking permission to produce certified copies of mutation No. 728 and 1209 sanctioned on August 31, 1908 and September 27, 1908, respectively. The certified copies of the mutations were, placed on record. A perusal thereof reveals that Lachhman, predecessor-in-interest of the defendants, was shown gair kabzan (without possession) and the mutation for removing his name from the revenue record was sanctioned. That application was rejected by the first appellate Court with the following observations : -

"2. I have heard the ld. counsel for both the parties.

3. It is true that copy of jamabandi for 1886-87 and copies of mutations No. 728 and 1209 can be helpful to this court in properly and effectively deciding the matter but I feel that by allowing them permission for additional evidence, it would amount to permit them to make out a case of abandonment of land by the defendants 100 years ago and their claim for adverse possession for the last 100 years. So, this application for additional evidence is disallowed."

In paragraph No. 1, the first appellate Court gave the facts and then declined the permission with the aforementioned observations. It held that the production of copies of mutations No. 728 and 1 09 would enable it to effectively decide the point in dispute but permission to lead additional evidence will enable the plaintiffs to establish the plea of abandonment. The first appellate Court did not appreciate that the precise case pleaded by the plaintiffs and proved at the trial was that they had become owners of the suit land by adverse possession. The documentary evidence sought to be produced satisfied the requirement of clause (b) of sub-rule (1) of Rule 27 of Order XLI of the Code. The appellate Court can admit additional evidence if it is required to enable it to pronounce judgment. The Court may be able to. pronounce judgment even in the absence of additional evidence, but if production of additional evidence, can enable the Court to dispose of the appeal in a more satisfactory manner, conditions mentioned in the sub-clause will be satisfied. The expression "substantial cause" mentioned in the sub-rule confers a wide discretion on the appellate Court to admit additional evidence when the ends of justice require it. It can do so even if it can pronounce judgment on the basis of material on record. But the additional evidence must be decisive and conclusive in character and free from suspicion. In the instant case, additional evidence sought to be produced was free from any suspicion. The revenue record, including the record of rights, was sought to be produced. These are public documents and admissible without formal proof. The defendants could not challenge the authenticity of these documents. The production of these documents would have enabled the first appellate Court to conclusively" adjudicate on the plea of abandonment and which would enable them to establish their plea of ownership by adverse possession. The first appellate Court was wholly in error in disallowing the production of additional documentary evidence. The order of the first appellate Court dated April 1, 1989 is, thus, reversed.

11. If the plaintiffs are to be granted an opportunity to lead additional evidence, then the defendants must be allowed an opportunity to lead evidence in rebuttal. In these circumstances, it will meet the ends of justice to call a report from the first appellate Court under Order XLI, rule 25, of the Code. The first appellate Court shall permit the plaintiffs to produce additional evidence and any other connecting evidence or oral evidence in this behalf. It will also give one opportunity to the defendants to lead rebuttal evidence. After recording the evidence, it will re-determine issue No. 1 in the light of the evidence already present on the record and the additional evidence brought on record and will submit its report to this Court within three months from the date of receipt of

copy of this order. On receipt of the report, the appeal will be set down for hearing for disposal.

12. For the reasons as stated above, first appellate Court will submit its report as indicated above and on receipt of the report the Registry will enlist this appeal for hearing.