
(2009) 03 P&H CK 0128
In the Punjab And Haryana At Chandigarh

State of Haryana	Vs	APPELLANT
Mukesh Kumar and Others		RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2009) 154 PLR 753

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.

C.M. No. 11624-C of 2008

1. For the reasons mentioned in the application, delay of 18 days in filing the appeal is condoned.

C.M. disposed of.

U.S.A. No. 3909 of 2008

Appellant filed a suit for declaration to the effect that it has acquired the rights of ownership of the suit property by way of adverse possession. The aforesaid claim of the appellant was contested by the defendant-respondents. The Trial Court after relying upon the judgment of this Court in Bhim Singh and Others Vs. Zile Singh and Others, wherein it has been held that no declaration can be sought by a plaintiff with regard to ownership on the basis of adverse possession as such plea is available only to a defendant against the plaintiff, dismissed the suit. While dismissing the suit, the trial Court also found that despite claiming the adverse possession, there is no pleading qua denial of title of defendants by the plaintiff. So much so, the specific day when alleged possession of State became adverse against the defendants was not mentioned so as to establish the starting point of limitation could be found and thus, in the absence of the aforesaid plea,

long possession even if proved was not sufficient to seek relief of ownership by way of adverse possession.

2. The appeal filed by the State of Haryana against the aforesaid judgment and decree of the trial Court was also dismissed by the Lower Appellate Court vide impugned judgment and decree dated 11.08.2008.

3. Still not satisfied, the plaintiff-State of Haryana has filed this appeal challenging the judgment and decrees of the courts below.

4. The learned Assistant Advocate General, Haryana has contended that the Courts below have failed to appreciate the law as well as facts as there was ample evidence on record of the case to prove that the appellants have become owner of the suit property by way of adverse possession pertaining to the suit land and thus the judgment and decrees of the Lower Appellate Court are liable to be set aside.

5. Learned Counsel for the appellant has also relied upon the judgment of Hon''ble Supreme Court in the case of Krishnamurthy S. Setlur Dead by LRs. Vs. O.V. Narasimha Setty and Others, to contend that plea of adverse possession can be taken up by the plaintiff and suit for declaration to the effect that he has become owner by way of adverse possession is maintainable. Learned Counsel has contended that in Krishnamurthy's case (supra), it was plaintiffs' suit claiming adverse possession and the Hon''ble Supreme Court had not held that such a suit was not maintainable and thus the appeal is liable to be accepted and the following substantial questions of law arise in this appeal:

1. Whether the State is debarred from taking the plea of adverse possession?

2. Whether the suit of the plaintiff-appellant can be held to be not maintainable?

6. I have heard learned Counsel for the appellant. The contention raised by the learned Counsel for the appellant is misconceived. In Krishnamurthy's case, the question before the Hon''ble Supreme Court was to the effect whether the tenant's possession could be treated as possession of the owner in computation of the period of 12 years under Article 64 of the Limitation Act, 1963 and no such question that whether plea of adverse possession can be taken by the plaintiff in a suit for declaration claiming ownership by way of adverse possession was raised. Moreover, in the aforesaid judgment, the Hon''ble Supreme Court did not express any opinion on the merits of the matter as it found that the impugned judgment was a bundle of confusion and there were serious errors in the impugned judgment which warranted interference under Article 136 of the Constitution of India and for these reasons without expressing any opinion on the merits of the case, the matter was remanded back to the High Court for decision. In view of the aforesaid facts and circumstances, the judgment of the Hon''ble Supreme Court in Krishnamurthy's case is of no help to the appellant.

7. In Bhim Singh's case (supra), this Court has authoritatively held that a suit for declaration by a person claiming ownership of immovable property by way of

adverse possession is not maintainable. Learned Counsel for the appellant was unable to cite any judgment contrary to this.

8. Similarly in *Kanak Ram and Ors. v. Chanan Singh and Ors.* (2007) 146 P.L.R. 497 the view taken in *Bhim Singh's* case (*supra*) was reiterated. It is also relevant to mention, at this stage that in the case of *Food Corporation of India v. Dayal Singh* 1991 P.L.J. 425, this Court observed that it did not behove a Government undertaking to take up the plea of adverse possession. In the present day scenario, the State is a welfare State which is responsible for protection of the life and property of its citizens. Whereas, in the present case, the State itself is trying to grab the land/property of the respondents under the garb of plea of adverse possession and the action of the appellant is deplorable.

Thus, I find no merit in this appeal.

No substantial question of law arises.

Dismissed.