

(2013) 04 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2417 of 2010

State of Punjab and Others

APPELLANT

Vs

Amandeep Singh Gill

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2013) 171 PLR 193

Hon'ble Judges : Nawab Singh, J

Bench : Single Bench

Advocate : Ashwani Talwar, Additional AG, Punjab for State, for the Appellant;
Arun Jain with Mr. Kushagar Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

Nawab Singh, J.—This second appeal has been filed by State of Punjab and others against the judgment and decree dated April 1st, 2010

passed by District Judge, Ferozepur affirming the judgment and decree of Additional Civil Judge (Senior Division), Ferozepur dated December

24th, 2009 whereby suit for possession of land mentioned in the head note of the plaint was decreed. The parties will be referred to in this

judgment as they were described in the plaint.

2. The plaintiff filed suit for possession of the suit land pleading that the land was owned by his grand father Sh. Davinder Singh, who transferred

the same in favour of Zora Singh, who was Pagwat brother (foster brother) of Sh. Davinder Singh. Zora Singh executed a Will in his favour on

August 30th, 1980. Zora Singh died on February 13th, 1995. After his death, mutation was sanctioned in his favour by Assistant Collector IInd

Grade, Moga vide order dated October 23rd, 1997. It has been pleaded that in

the first week of April, 1998, the defendants with the help of Police, forcibly took over possession of the suit land. Hence, the suit.

3. The defendants filed written-statement averring that Zora Singh sold the suit land to one Roor Singh vide sale deed dated May 15th, 1958 and

Roor Singh further sold the same to the defendants on February 3rd, 1961 and on the basis of sale-deed, mutation was also sanctioned in favour

of the defendants. The execution of Will by Zora Singh in favour of the plaintiff was denied. It has been also pleaded that in case the defendants fail

to prove the sale-deed then they should be declared owners of the suit land on the basis of adverse possession.

4. Replication controverting the pleas of the written statement and reasserting those of the plaintiff, was filed.

5. On the contest of the parties, following issues were framed:-

1. Whether the plaintiff is entitled to possession being sole owner ? OPP

2. Whether the plaintiff is entitled to injunction as prayed for ? OPP

3. Whether the plaintiff has got no locus standi to file the suit ? OPD

3-A Whether the defendants are owners in possession of suit land vide sale deed dated 3.2.61 ? OPD

3-B If issue No. 3-A remains unproved, whether defendants have become owners of suit land by way of adverse possession ? OPD

4. Whether the suit is not maintainable ? OPD

5. Whether the suit is not within time ? OPD

6. Whether no legal and valid notice u/S 80 CPC was served to the defendants ? OPD

7. Relief.

6. Issues No. 1, 2, 3-A and 3-B were taken up together being inter connected. All these issues were decided in favour of the plaintiff. It was held

that defendants had failed to prove their possession on the basis of sale deed dated February 3rd, 1961. The plea of adverse possession was

dismissed. The remaining issues were also decided against the defendants. Consequently, the plaintiff was held entitled to possession of the suit

land being its owner.

7. From the pleadings of the parties, judgments of the Courts below and after hearing learned counsel for the parties, following substantial

questions of law arise in this appeal:-

(i) whether the defendants proved the execution of sale deed dated February 3rd, 1961 by Roor Singh in their favour?

(ii) whether the defendants could prove their adverse possession.

8. Learned counsel for the appellants has fairly conceded that the defendants failed to prove the execution and contents of sale-deed dated

February 3rd, 1961. In fact, the appellants filed an application to prove the sale-deed by leading secondary evidence but the same was dismissed

by the trial Judge vide order dated October 11th, 2001. Against the said order, defendants filed Civil Revision No. 181 of 2002 before this Court.

The same was dismissed vide order dated February 28th, 2002. Against the order passed by this Court, the defendants filed Special Leave to

Appeal No. 11768 of 2002 before the Hon"ble Supreme Court but the same was also dismissed by order dated July 11th, 2002. In view of this,

it is unhesitatingly held that the defendants failed to prove the sale-deed dated February 3rd, 1961 allegedly executed by one Roor Singh in their

favour so, the findings of the Courts below on issue 3-A are upheld.

9. Next question, is, as to whether the defendants could prove that they had perfected their title by adverse possession or not?

10. Adverse possession is essentially a hostile possession against the title of the true owner. It includes possession by a defendant in practical

contravention of the plaintiffs right. Normally the defendant's adverse possession is referred when he is in exclusive possession with the intention to

hold himself as the owner. To put it differently, it is possession with animus to hold the property in the possessor's own right and against the right of

the true owner.

11. Where possession is proved to be in its origin permissive, it will be presumed that it continued to be of the same character until and unless

something occurred to make it adverse. The onus is on the permissible occupant to show when and how his possession became adverse. In order

to discharge this, there must be clear and affirmative evidence to establish the change in the character of possession. There must be an open and

explicit disavowal and disclaimer brought to the knowledge of the owner. The mere fact of long user by the permissive occupant is not sufficient to

alter the character of the permissive possession into an adverse one.

12. In the case in hand, the defendants have placed on record copy of mutation (Exhibit D-16) vide which after the death of Zora Singh on

February 13th, 1995 the land was mutated in the name of plaintiff. Indisputably, the said order was never challenged by the defendants. The

defendants got the mutations (Exhibit D-17 and D-18) sanctioned in their favour after filing of the present suit by the plaintiff and that too, at his

back. Though, the defendants pleaded that Zora Singh never executed any Will in favour of the plaintiff but they have no locus-standi to challenge

the said Will. Factually, the plaintiff has proved the execution and contents of Will by examining Nachhattar Singh (PW-1) son of attesting witness

Dalip Singh because the latter had died. Contrary to this, no evidence worth the name has been led by the defendants to prove that the Will was

forged one. Inderjit Singh (PW-4) and the plaintiff (PW-5) have also proved that in the first week of April 1998 the defendants had forcibly taken

possession of the land. Immediately, thereafter the plaintiff filed the present suit.

13. In Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbhai Harijan and Others, the Hon"ble Supreme Court on the law of adverse possession

observed in paragraph No. 34 and 35 as under:-

34. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of

inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall

for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a

clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of

approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

35. We fail to comprehend why the law should place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the

owner to loose its possession only because of his inaction in taking back the possession within limitation.

14. The plea of ownership as sought to be raised by the defendants viz State of Punjab and the plea of adverse possession are mutually destructive

of each other. Both these pleas are inconsistent and are not tenable. The

Government should not be permitted to perfect the title of the land by invoking the provisions of adverse possession.

15. Above being the legal and factual position, it is held that defendants have failed to prove their adverse possession over the land so, the findings of the Courts below on issue No. 3-B are also affirmed. In upshot, for the reasons recorded supra, the judgments passed by the Courts below are upheld and the appeal is dismissed.