

Mohan Singh Alias Surinder Mohan Singh Vs. Gurdit Singh and ors.

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Court : Punjab and Haryana

Decided On : Oct-08-2003

Reported in : (2004)137PLR729

Judge : Viney Mittal, J.

Appeal No. : Regular Second Appeal No. 1311 of 1983

Appellant : Mohan Singh Alias Surinder Mohan Singh

Respondent : Gurdit Singh and ors.

Advocate for Def. : Ashok Aggarwal, Sr. Adv. and; Alok Jain, Adv.

Advocate for Pet/Ap. : R.C. Setia, Sr. Adv. and; Anish Setia, Adv.

Disposition : Appeal allowed

Judgement :

Viney Mittal, J.

1. During the course of arguments, the following substantial questions of law have arisen in the present appeal.

a) As to whether the learned first appellate Court having held that the defendant had not become the owner of the suit land by way of adverse possession and also having held that the suit filed by the plaintiff was within limitation, still the suit of the

plaintiff could be dismissed?

b) As to whether the facts and circumstances of the case truly reflected any acquiescence on the part of the plaintiff so as to dismiss his suit for possession?

c) As to whether the findings of the Courts below being based on mis-reading and non-reading of important evidence, the findings recorded by the learned Courts below were not termed as judicially perverse and as such liable to be set aside?

2. The plaintiff has approached this court through the present regular second appeal. He filed a suit for possession of the land in dispute situated in village Heon, Tehsil Nawanshahr. It was claimed that the aforesaid land in dispute was the ownership of the plaintiff and that the defendant had taken the forcible possession of the same and without the consent of the plaintiff had raised some construction without any authority. The said construction was illegal. Accordingly, the plaintiff claimed the possession of the suit land after removing the aforesaid construction.

3. The suit was contested by the defendants. It was claimed that the suit was barred by limitation and also that the plaintiff was estopped by his act and conduct from filing the suit. The defendant further claimed that he had purchased the site in dispute for Rs. 400/- from one Sohan Lal, who is brother of the plaintiff, vide sale deed dated October 13, 1961. It was also claimed that the defendant had raised construction on the aforesaid land in dispute and, therefore, he was in possession of the same for the last 17 years. The defendant also claimed that he had become the owner of the suit land by way of adverse possession. On the pleadings of the parties, the learned trial court framed the following issues.

1. Whether the plaintiff is the owner of taur No. 86? OPP

2. Whether the defendant has purchased the property in dispute from Sohan Lal on 13.10.61, if so, its effect? OPP

3. Whether the plaintiff is barred by his acts and conduct to file the present suit? OPP

4. Whether the suit is not within limitation? OPD
5. Whether the defendants are in possession continuously and without interruption for more than 12 years? OPD
6. Whether the plaintiff has locus standi to file the present suit? OPP
7. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD
8. Whether the defendants made construction over the taur in dispute, if so, of what value? OPD.
9. Whether the suit is not maintainable in the present form? OPP
10. Relief.

4. The parties led their evidence. The learned trial Court held that as per the copy of the allotment letter Ex.P2, the plaintiff had been allotted the site in question at village Heon. On the basis of the documentary as well as other oral evidence led by the parties, it was held by the learned trial Court that the plaintiff Mohan Singh is the owner of the site in dispute. It was further held that since the defendant had claimed that he had purchased the site in dispute from one Sohan Lal, brother of the plaintiff, therefore, the said sale by aforesaid Sohan Lal was without any authority is as much as Sohan Lal was not shown to be owner of the suit land in any manner. Accordingly, the said sale deed in favour of the defendant was held to be without any authority. However, the learned trial Court held that the defendant had become the owner of the suit land by way of adverse possession and, accordingly, the suit filed by the plaintiff was held to be not within limitation. Thus, the suit of the plaintiff was dismissed.

5. The plaintiff felt aggrieved. He filed an appeal before the learned first Appellate Court. The aforesaid appeal was heard by the learned Additional District Judge. During the course of the aforesaid appeal, the parties confined their arguments only to issue No. 3, 4 and 5. Findings recorded by the learned trial Court on the other issues were not challenged.

6. The learned first appellate Court reappraised the entire evidence. On the basis of such reappraisal, the learned first appellate Court found that the house in question came to be occupied by the defendant only in the year 1970 and as such it was proved that it was constructed in or about the year 1970. The plea of the defendant that the house in question was constructed soon after the execution of the sale deed Ex.D4 dated October 13, 1961 was rejected. Accordingly, it was held that the suit filed by the plaintiff in the year 1978 could not be held to be barred by limitation and further also it could not be held that the possession of the defendant had ripened into ownership. Thus, the learned first appellate court reversed the findings recorded by the learned trial court on issue No. 4 and 5 and held that the suit filed by the plaintiff was within limitation and also that the defendant had not acquired ownership rights by way of adverse possession. However, while dealing with issue No. 3, the learned first appellate Court found that since the plaintiff had kept silent even after the construction was raised by the defendant in the year 1970 and had filed the suit only in the year 1978, therefore, as per the doctrine of acquiescence, the claim of the plaintiff was liable to be rejected. Accordingly, the learned first appellate Court upheld the findings recorded by the learned trial Court on issue No. 3 and dismissed the appeal filed by the plaintiff.

7. The plaintiff has now filed the present regular second appeal challenging the judgment and decree of the learned Courts below.

8. The arguments in the present appeal were partly heard on August 6, 2003. The following orders were passed on August 6, 2003:

'Arguments heard partly.

Learned counsel appearing for the respondents prays for short adjournment to seek instructions from his clients as to whether they are ready to compensate the plaintiff-appellant with regard to the price of the land.

Adjourned to September 3, 2003 for further arguments.'

9. Again on September 3, 2003, the following orders were passed;

'Learned counsel for the respondents prays for some time to seek necessary instructions from his clients in the light of order dated August 6, 2003.

In the interest of justice, adjourned to September 17, 2003. Let the respondents be present in person on that date. It is made clear that no further adjournment would be granted.'

10. However, the defendant-respondents did not choose to appear before this Court personally as directed or give any instructions to their counsel in terms of the order dated August 6, 2003. In fact Shri Ashok Aggarwal, the learned senior counsel appearing with Shri Alok Jain, Advocate has made a statement that he has not heard anything from the defendant-respondents, although a communication with regard to the orders dated August 6, 2003 and September 3, 2003 was duly sent to the respondents. Accordingly, the appeal has been heard on merit.

11. I have heard Shri R.C. Setia, the learned senior counsel appearing for the appellant and Shri Ashok Aggarwal, the learned senior counsel appearing for the respondents and with their assistance have also gone through the record of the case.

12. Shri R.C. Setia, the learned senior counsel appearing for the appellant has challenged the findings recorded by the learned first appellate court on issue No. 3 by arguing that once the learned first Appellate Court had itself held that the defendant had not become owner of the suit land by way of adverse possession and also further held that the suit filed by the plaintiff for possession was not barred by limitation, still the suit filed by the plaintiff has been dismissed by the learned first appellate court on the ground of the plaintiff having acquiesced in the construction raised by the defendant. According to Shri Setia, the said finding recorded by the learned first appellate Court was not only legally unsustainable but also there was no material on the record to show that at any point of time the plaintiff had consented either impliedly or other wise or in any manner acquiesced in the said construction. According to the learned counsel, the said finding recorded by the learned first appellate court was in fact based on no material available on the record and as such the said finding being judicially perverse was

liable to be set aside.

13. On the other hand, Shri Ashok Aggarwal, the learned senior counsel appearing for the respondents has argued that in fact the finding recorded by the learned first appellate Court was absolutely legal and valid in as much as the plaintiff had kept silent for a period of about 8 years before the present suit was filed. According to Shri Aggarwal even as per the finding recorded by the learned first appellate court, the construction in dispute had been raised by the defendant in the year 1970 and the present suit has been filed in the year 1978 and, therefore the plaintiff having kept silent for such a long period, the suit had been rightly dismissed by the learned first appellate Court.

14. I have given my thoughtful consideration to the rival pleas raised by the learned counsel for the parties. In my considered view, the present appeal deserves to succeed.

15. From the perusal of the judgment passed by the learned first Appellate Court, I find that the learned first Appellate Court has reversed the findings of the learned trial court on issue No. 4 and 5. Whereas the learned trial Court has held that the suit filed by the plaintiff was barred by limitation and also that the defendant had become the owner of the suit land by way of adverse possession, the learned first appellate Court on reappraisal of the documentary as well as the oral evidence has come to the conclusion that the defendant had not become the owner of the suit land by way of adverse possession and under the circumstances, the suit filed by the plaintiff could not be held to be barred by limitation. No finding whatsoever, has been recorded by the learned first appellate Court to the effect that the plaintiff was present or had the knowledge of the construction being raised by the defendant. Nothing has been suggested even during the course of arguments in the present appeal on behalf of the defendant-respondents that the plaintiff had the knowledge or had not objected to the construction being raised by the defendant in the year 1979. The learned first appellate court has proceeded to give a finding of acquiescence on behalf of the plaintiff merely because after the construction had been raised by the defendant, the plaintiff had chosen to file the present suit after a gap of 8 years. This fact, in my considered view, cannot be

taken to be any acquiescence on behalf of the plaintiff or waiver of rights on his behalf. The doctrine of acquiescence can be attracted to a case only when the person knowing certain facts to be correct either keeps silent or does not take any action when any action in violation or disregard of the aforesaid facts is being taken. Had there been any evidence on the record to suggest that the plaintiff had been seeing the constructions being raised by the defendant and had taken no action to stop it, then the doctrine of acquiescence would definitely have been attracted. That is not the case here. As noticed above, even as per the findings recorded by the learned Courts below, the construction was raised by the defendant in the year 1970. There is nothing on the record to suggest that the said construction was raised within the knowledge of the plaintiff. If after the construction had been completed the plaintiff had taken some time to file the present suit and the said suit filed by the plaintiff is within limitation, then no fault can be found with the action sought to be taken by the plaintiff in filing the present suit. It cannot be suggested that the suit filed by the plaintiff was barred in any manner by the doctrine of acquiescence. It is apparent that the learned Courts below have completely mis-constructed the doctrine of acquiescence in applying the same to the facts of the present case.

16. At this stage the law universally accepted by the Courts on the doctrine of acquiescence may be noticed with some advantage:

17. In *Wilmott v. Barber*, L.R.15 Ch.D.96, 105(1880) in regard to acquiescence by conduct, it was observed;

'A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights. What, then, are the elements or requisites necessary to constitute fraud of that description? In the first place, the plaintiff must have made a mistake as to his legal rights. Secondly, the plaintiff must have expended some money, or must have done some act (not necessarily upon the defendants' land) on the faith of this mistaken belief. Thirdly, the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it he is in the same position as the plaintiff, and the doctrine of

acquiescence is founded upon conduct with a knowledge of your legal rights. Fourthly, the defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of the rights. If he does not there is nothing which calls upon him to assert as his own rights. Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done, either directly, or by abstaining from asserting his legal right.'

18. In *De Bussche v. Alt*, L.R. 8 CH.D. 286 (1878) it was observed:

'If a person having a right, and seeing another person about to commit, or in the course of committing an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act. This, as Lord Cottenham said in the case already cited, is the proper sense of the term 'acquiescence' and in that sense may be defined as acquiescence under such circumstances as that assent may be reasonably inferred from it, and is no more than an instance of the law of estoppel by words or conduct. But when once the act is completed without any knowledge or assent upon the part of the person whose right is infringed, the matter is to be determined on very different legal considerations. A right of action has then vested in him which, at all events as a general rule, cannot be divested without accord and satisfaction, or released under seal. Mere submission to the injury for any time short of the period limited by statute for the enforcement of the right of action cannot take away such right, although under the name of laches it may afford a ground for refusing relief under some particular circumstances; and it is clear that even an express promise by the person injured that he would not take any legal proceedings to redress the injury done to him could not by itself constitute a bar to such proceedings, for the promise would be without consideration and therefore, not binding.'

19. This Court also had an occasion to deal with the aforesaid doctrine in a case reported as *Satish Kumar and Company v. Krishan Gopal*, (1998-3)120 P.L.R. 256 wherein it was held as, follows:

'It is in reference to the law laid down in the afore-mentioned judgments, the conduct of the respondent is to be seen. As noticed earlier, the case of the landlord throughout had been that he had objected to the change made by the tenant and the tenant agreed to vacate the premises, but later refused to do so. It is undisputed that after the tenant had raised construction neither increase in rent was demanded nor was it increased. In fact, landlord at no stage had encouraged the tenant to spend money in raising construction either directly or by abstaining from asserting his legal rights. The moment the tenant raised construction, landlord objected to it. There was 'no lapse on his part to object to the construction raised by the tenant which could be taken as signifying his acceptance or consent. Simply, because for some years the landlord did not file petition for ejectment on the ground of impairment of value and utility of the premises, is no ground to hold that landlord had acquiesced or waived his right to seek ejectment of his tenant on this score. If the tenant had chosen to make unauthorized construction at his own and the landlord did not take action for some time, it would not mean that landlord had acquiesced or waived his right. The filing of two petitions by the respondent during the intervening period without taking the ground of impairment of value and utility of the premises too cannot be regarded as waiving of his rights, particularly when it is conceded that the said petitions were filed only for claiming rent which the tenant had fallen in arrears.'

20. It is thus clear that it is only when a person either consent, impliedly or otherwise, and does not take any action, it can be inferred that he has assented the said violation of his rights in any manner that he cannot be heard afterwards to complain against the aforesaid act. This is not so in the present case.

21. As noticed above, there is absolutely no evidence on the record of the case to suggest that the plaintiff had at any point of time, either impliedly or otherwise, consented to the construction being raised by the defendant.

22. The two courts below have concurrently held that the plaintiff is the owner of the suit land. The learned first appellate court additionally has found that the defendant had not become the owner of the suit land by way of adverse possession. The suit filed by the plaintiff has been held to be within limitation.

Under these circumstances, there was absolutely no justification for the learned first appellate court to dismiss the appeal filed by the plaintiff and consequently dismiss the suit also on the ground of his having acquiesced in the construction. From the facts and circumstances of the case, I do not find any such acquiescence could be presumed.

23. In view of the aforesaid discussion, the question (a), (b) and (c) framed above, have necessarily to be answered in favour of the plaintiff-appellant.

24. It may be relevant to notice here again that during the course of proceedings of the present appeal, the matter was adjourned twice by this Court also to find out as to whether the defendant-respondents were ready to compensate the plaintiff-appellant with regard to the price of land. The respondents have chosen to keep silent and have not responded to the communication addressed by their counsel.

25. Accordingly, I have no hesitation in allowing the present appeal and setting aside the judgments and decree of the courts below. Consequently, the suit of the plaintiff is decreed. There shall be no order as to costs.