

Gurcharan Singh and ors. Vs. Mukhtiar Singh and ors.

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Court : Punjab and Haryana

Decided On : Apr-30-2010

Judge : Alok Singh, J.

Appellant : Gurcharan Singh and ors.

Respondent : Mukhtiar Singh and ors.

Disposition : Appeal allowed

Judgement :

Alok Singh, J.

1. Both these Regular Second Appeals are filed by the defendants- appellants challenging the judgement and decree passed by First Appellate Court/Additional District Judge, Faridkot dated 16.2.1990 whereby decreeing the suit of the plaintiffs for declaration declaring the plaintiffs owner of the suit land by adverse possession and further dismissing the counter claim of the defendants/appellants herein seeking possession from the plaintiffs.

2. Brief facts of the present case are that plaintiffs preferred a suit for declaration before the trial Court saying the plaintiffs have matured their title on the basis of adverse possession against the defendants. In a suit for declaration filed by the plaintiffs, defendants/appellants herein, preferred their counter claim seeking relief of possession from the plaintiffs claiming themselves (defendants) as owner of the

property in dispute.

3. The trial Court vide judgement dated 3.1.1987 dismissed the suit of the plaintiffs claiming title on the basis of adverse possession while counter claim of the defendants - appellants herein was decreed and granted decree of possession in favour of the plaintiffs pertaining to the suit property.

4. Feeling aggrieved from the judgement and decree passed by the trial Court dated 31.1.1987, defendants preferred two appeals before the First Appellate Court and the First Appellate Court vide impugned judgement and decree dated 16.2.1990 allowed the appeals thereby decreeing the suit of the plaintiffs and dismissing the counter claim of the defendants.

5. Feeling aggrieved by the judgement passed by the First Appellate Court, defendants have preferred these two appeals, one against the dismissal of the counter claim and the other decreeing the suit of the plaintiffs declaring them owner of the property by way of adverse possession.

6. Main contention of the plaintiffs is that Buggar Singh son of Mangal Singh, the predecessor in interest of the plaintiffs, remained in possession of the land in dispute for 40 years and did not pay any rent or batai to the owner of the land and his possession over the land was open, hostile, peaceful and uninterrupted, hence, Buggar Singh had become the owner of the property by way of adverse possession; Buggar Singh continued in possession till 24.9.1980 on which date he expired. Thereafter, plaintiffs stepped into his shoes and they came into possession of the land in dispute. The possession of the plaintiffs and the defendant No. 18 was open, hostile and to the knowledge of the contesting defendants No. 1 to 17. The plaintiffs and defendant No. 18 have thus become owner of the land in dispute by adverse possession. Buggar Singh before his death executed a Will dated 8.9.1978 and on the basis of the aforesaid Will, plaintiffs and defendant No. 18 are the owners of the property in dispute and inherited all the rights of Buggar Singh and also matured their title by way of adverse possession. Further case of the plaintiffs is that defendants No. 1 to 4 claimed that they have purchased the suit land from defendants No. 5 to 17 and they are entitled to take possession of the land forcibly while they are neither

owner nor could have purchased the land in dispute when plaintiffs have matured their right by way of adverse possession.

7. Defendants No. 1 to 14 filed joint written statement denying the possession of Buggar Singh for the last 40 years. Chaggar Singh and others as mentioned in paragraph 2 of the written statement, were the owner in possession of the suit land and they have executed sale deed dated 17.10.1984 in favour of the answering defendants. Land in question was under mortgage and the mortgagees inducted Buggar Singh as tenant, hence possession of Buggar Singh has remained permissive; he had never been in adverse possession; while redeeming the mortgage, Buggar Singh was found to be the tenant on behalf of the mortgagee, hence there is no question of maturing of title by adverse possession.

8. I Have heard learned Counsel for the parties and perused the record. With the help of learned Counsel for the parties, following substantial questions of law are being formulated for the just and fair adjudication of the lis between the parties:

1. As to whether plea of adverse possession can be taken by a person found to be in permissible possession as tenant in view of Section 116 of the Indian Evidence Act ?

2. As to whether plaintiffs have matured their title by way of adverse possession ?

9. Both the substantial questions of law are inter-linked and are being taken up together for the just and fair decision of these appeals.

10. Undisputedly, Buggar Singh had filed an application dated 1.6.1971, copy Ex. P-5, seeking recording of his name in the Girdawari as owner by adverse possession from Kharif 1967 to Rabi 1971. The Assistant Collector ordered for the correction of Girdawari showing the name of Buggar Singh as tenant by Will and the rent be shown as prevalent in the village and entries were recorded in the revenue records accordingly. Consequently, possession of Buggar Singh was recorded as tenant at Will with effect from 1961. Buggar Singh never challenged the order of the revenue authorities directing to record his possession as tenant. Not only this, the Collector, Muktsar vide order dated 31.5.1971 directed to

redeem the mortgage on payment of mortgage amount with the following observations:

This order of mine will however not effect the right of anybody to remain in possession of the land and if the petitioner want to get possession of the land mortgaged, they should prosecute their remedy available to them under the law.

11. In view of the above order passed by the competent authorities having jurisdiction over the matter, I have no hesitation to hold that Buggar Singh was in possession of the property in dispute as a tenant thereof. If Buggar Singh was tenant of the property in dispute then he cannot set up title by adverse possession in view of Section 116 of the Indian Evidence Act, challenging the title of the owner/landlord of the property in dispute. The principle of 'once a tenant always a tenant' would apply. Findings of the First Appellate Court that the order of the revenue authority was not legal and justify cannot hold water because of the fact that in a civil litigation order of the competent revenue authority was not in challenge. Secondly, Civil Court hearing civil suit shall not act as an Appellate Court over the decision of the competent revenue Court. Finding of the First Appellate Court that orders of the revenue authority was not justified and not legal cannot be accepted. Once Buggar Singh allowed the decision of the revenue authorities to attained finality, it was not open for the Civil Court (appellate Court) to disbelieve the order passed by the competent revenue authority saying orders are illegal. It is no body's case that revenue authorities were having no jurisdiction while directing to record name of Buggar Singh in the revenue record showing him in possession as tenant of the property in dispute. Hence revenue authority was having jurisdiction. Therefore, order passed by the revenue authority cannot be said to be illegal in a subsequent civil suit. Plaintiffs cannot acquire title by way of adverse possession. Plaintiffs failed to prove title by way of adverse possession.

12. In view of the above, both the substantial questions of law are answered in favour of the appellants.

13. In view of the findings recorded hereinabove in reply to substantial questions of law, impugned judgement passed by the First Appellate Court cannot be sustained.

14. Both these appeals are allowed with costs throughout. Impugned judgements of the First Appellate Court are set aside and of the trial Court is restored. Suit of the plaintiffs is dismissed while counter claim of the defendants is decreed. Defendants - appellants are entitled to costs of the litigation from the plaintiffs throughout.

15. Plaintiffs are directed to hand over vacant possession of the land in dispute to the appellants within one month from today. If the plaintiffs fail to deliver vacant possession of the land to the appellant then the appellants shall be entitled to have the possession through the execution at the costs of the plaintiffs - respondents.

16. Decree be prepared accordingly.

17. A photocopy of the order be placed on the file of connected appeal.

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