
Ram Piari and Others Vs Bimla and Another

Regular Second Appeal No. 2352 of 1997

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 5, 2002

Acts Referred:

Limitation Act, 1963 " Article 64 , 65

Citation: AIR 2002 P&H 323

Hon'ble Judges: M.L. Singhal, J

Bench: Single Bench

Advocate: G.S. Jaswal, for the Appellant; K.S. Cheema, for the Respondent

Final Decision: Dismissed

Judgement

M.L. Singhal, J.

Land measuring 208 kanal 14 marla was owned by one Ramji Dass who died on 16-3-1960, Ramji Dass had two wives,

Smt. Bimla is Ramji Dass"s daughter from second wife Sanya Devi, Ranjit Singh, Kashmir Singh, Malkiat Singh and Smt. Kanta Devi are the sons

and daughter of Ramji Dass from his first wife, Smt. Bimla filed suit for joint possession against Ranjit Singh and others claiming 1/6 share in land

measuring 208 kanal 14 marla belonging to Ramji Dass, After the death of Ramji Dass, the plaintiff and her mother Sanya Devi were turned out of

the residential house of Ramji Dass, Ranjit Singh and other defendants took possession of the entire estate of Ramji Dass, Smt. Bimla was not

aware of the mutation proceedings. She requested Ranjit Singh and others many a time to deliver her joint possession to the extent of 1/6 share in

the suit land as she was also one of the co-owners with them. It was alleged in the plaint that they had been recognising her right by giving her share

of the produce from time to time. In the month of August, 1987 she came to know about the sanctioning of mutation of the estate of Ramji Dass.

Thereafter, she got copy of jamabandi. Finding that her name was not there in the revenue record and that she had been illegally ignored by the

Revenue Officer so far as the inheritance of Ramji Dass was concerned, she filed this suit for joint possession.

2. Ranjit Singh and other defendant Nos. 1 to 4 contested the suit of the plaintiff urging that the suit was barred by time and that the suit for joint

possession was not maintainable. After the death of Ramji Dass, relations between Sanya Devi and Ranjit Singh etc. defendant Nos. 1 to 4

became strained, Sanya Devi left the house of Ramji Dass in May, 1960 along with Bimla and married Shankar Singh resident of Ghagyal, Tehsil

Dasuya, District Hoshiarpur, Ranjit Singh etc. defendant Nos. 1 to 4 took possession of the entire suit land to the exclusion of Bimla and her

mother Sanya Devi and they continued to enjoy exclusive possession to the exclusion of Bimla and her mother Sanya Devi in absolute severally to

their knowledge. Since May, 1960 the possession of Ranjit Singh etc. defendant Nos. 1 to 4 had been open, hostile, adverse towards Bimla and

Sanya Devi and they have been in open, hostile, continuous and peaceful possession of the land in suit as exclusive owners to the exclusion of the

plaintiff and her mother Sanya Devi and they stood completely ousted from the suit land. It was further urged that they (Ranjit Singh etc.) have

perfected their title to the land in suit by adverse possession. Land in suit was rightly mutated in favour of Ranjit Singh etc. defendants 1 to 4. It

was denied that they ever recognised the right of the plaintiff or they gave any share of the produce to her.

3. Smt. Sanya Devi was impleaded as defendant No. 5 in the suit on application under Order 1, Rule 10, CPC moved by Smt. Bimla Devi.

4. Smt. Sanya Devi defendant No. 5 filed written statement admitting the claim of the plaintiff. She pleaded that she had given up her 1/6 share in

favour of the plaintiff and thereby the share of the plaintiff swelled to 1/3 share. She prayed that the plaintiffs claim for joint possession be decreed

to the extent of 1/3rd share (1/6 + 1/6).

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

1. Whether suit is not maintainable in the present form? OPD

2. Whether the suit is within time?OPD

3. Whether plaintiff is entitled to a decree for joint possession to the extent of 1/6 share from the suit land? OPP

4. Relief.

6. Both the Courts below decreed the suit of Smt. Bimla. Hence this second appeal by late Ranjit Singh (represented by his widow Ram Piari) and

Malkiat Singh etc.

7. Vide order dated 4-12-1999 passed in this appeal, the following additional issue was framed by this Court :

Whether the defendants 1 to 4 have acquired exclusive title to the land in suit to the exclusion of the plaintiff, Smt. Sanya Devi (it should have been

Bimla Devi) by extinguishing her title through adverse possession? OPD

8. This issue was framed with a view to enable the parties to lead evidence on this issue so that a clear cut finding could be given whether

defendant Nos. 1 to 4 have acquired exclusive title to the land in suit to the exclusion of the plaintiff, Smt. Sanya Devi (it should have been Bimla

Devi) by extinguishing her title through adverse possession.

9. This issue was remitted for trial to the learned trial Court. It was directed that ""the learned trial Court will record its finding on this issue after

affording adequate opportunity to both the parties to lead evidence on this issue. Learned trial Court will send its finding on this issue together with

the evidence recorded thereon to the first appellate Court. Learned first appellate Court will record its own finding on this issue after going through

the evidence led by the parties on this issue before the learned trial Court. Learned first appellate Court will send the finding recorded by it and the

finding recorded by the learned trial Court on this issue together with the evidence to this Court. Learned trial Court will complete this exercise

within 6 months of the receipt of copy of this order. Learned first appellate Court will complete this exercise within 4 months of the receipt of copy

of the finding recorded by the learned trial Court together with the evidence on this issue"".

10. Both the Courts below have gone against Ranjit Singh etc. defendant Nos. 1 to 4 and have given finding that they have not been able to prove

that they have acquired exclusive title to the land in suit to the exclusion of the plaintiff by extinguishing her right through adverse possession and the

defendant Nos. 1 to 4 have not become owners of the suit property by way of adverse possession.

11. In this case there could be no question of the plaintiffs suit being barred by time, though succession opened on 16-3-1960 and the suit was

filed by Bimla Devi in 1987 because now inheritance suit is governed by Article 65 of the Limitation Act. It was observed by a Division Bench of

this Court in Mohinder Singh and Another Vs. Kashmira Singh, that inheritance does not remain in abeyance and after the death of last male

holder, heirs succeed to the property of the deceased in accordance with law. An heir is not required to file a suit for establishing his right as heir.

Suit for possession by heir not in possession of inherited property may fail on defendant proving that he perfected his title by adverse possession.

Such type of suits are governed by Article 65 of the Limitation Act. It was a suit filed by Kashmir Singh claiming himself to be the son of Niranjn

Singh from his second wife Smt. Mohinder Kaur for possession of his 1/3 share measuring 309 kanal 1 marla of land left behind by Niranjn Singh

who died in 1949. Suit was contested by the appellant entirely on grounds that Kashmir Singh was not the son of Niranjn Singh, in the alternative,

the appellants claimed absolute title by prescription. They also pleaded that the suit was barred by limitation. Suit was decreed by both the Courts

below. Hon"ble Division Bench found that no period of limitation was prescribed for filing a suit for possession on the basis of inheritance. Hon"ble

Division Bench dismissed the appeal. Inheritance suit can be filed at any time after the inheritance opens out but the person against whom

inheritance suit is filed can set up the plea of adverse possession and if his plea of adverse possession succeeds, inheritance suit will fail.

12. In this case thus the defendant Nos. 1 to 4 could non-suit Bimla Devi only on proving that they had acquired title to the land in suit to the

exclusion of Bimla Devi by extinguishing her title through adverse possession. If Ranjit Singh etc, fail to prove their adverse possession, Bimla

Devi's suit must succeed.

13. It was submitted by the learned counsel for the appellants that Ramji Dass died on 16-3-1960 and since 16-3-1960 Ranjit Singh etc. are in

possession. Smt. Sanya Devi/Bimla Devi never stepped into possession. It was submitted that Bimla Devi woke from her slumber after a lapse of

so many years. Sanya Devi never woke from her slumber. She remained asleep. She never questioned the possession of Ranjit Singh etc. to their

exclusion. It was submitted that during all this period Ranjit Singh etc. have been enjoying the usufruct of this property. Smt. Sanya Devi/Bimla

Devi did not call upon them to give them their share of the produce. Smt. Sanya Devi/Bimla Devi never participated in the profits of the land.

14. Learned counsel for the respondents on the other hand submitted that Ranjit Singh etc. are the children of Ramji Dass. Bimla Devi is also the

child of Ramji Dass, Sanya Devi is the widow of Ramji Dass. They are all heirs of Ramji Dass. As between coheirs, there can be no question of

adverse possession, even if one co-heir is in exclusive possession and remains in exclusive possession to the exclusion of the other co-owners as

possession of one co-heir is deemed to be the possession of all the coheirs. One co-heir is deemed to be in possession on behalf of the entire body

of coheirs.

15. It was held in Smt. Biro v. Amar Singh (1996) 1 CCC 427 that co-owner in possession would become constructive trustee on behalf of the

co-sharer who is not in possession and the right of such co-sharer would be deemed to be protected by the trustee. Mere non-participation, in the

rent and profits of the land by a co-sharer does not amount to ouster so as to give title by adverse possession to the other co-sharer in possession.

16. It was held in Banta Singh v. Hakam Singh (1994) 2 LJR 627, that mere non-payment of rent does not prove adverse possession. There

would be no adverse possession when there is no entry about Kabza being mukhalphana or jabran.

17. It was held by a Full Bench of this Court in Ganda Singh and Others Vs. Ram Narain Singh, as follows :

that an attribute of adverse possession is that it begins with disseisin or ouster of the owner. It is an act of displacement of the owner by the

adverse claimant. Disseisin or ouster of the real owner is the foundation of the title by adverse possession. It remains an inchoate title, or a growing

title till the expiration of 12 years of its continued, open and hostile assertion and enjoyment. Before title by adverse possession is perfected, all

presumptions and intendments are in favour of the real owner. There are a very large number of hurdles before the adverse claimant, which he has

successfully to clear." It was further held :

that the plaintiff in order to succeed, has to allege and establish that his possession was actual, adverse, exclusive, peaceful, continuous, unbroken,

open, notorious, visible, distinct, unequivocal and hostile under a colour of title, or, claim of right. He must further prove the date of commencement, the territorial extent and the length of his adverse possession.

18. In this case, attributes of ""adverse possession are thus not satisfied. In this case, Ranjit Singh etc. are merely shown in possession in the

revenue record. There is no entry in the revenue record that their possession is adverse or mukhalophana or jabran, qua Sanya Devi or Bimla Devi

who are equally entitled to inherit the property of Ramji Dass being his widow and daughter.

19. It was held in Shri Bhaguji Bayaji Pokale and others Vs. Shri Kantilal Baban Gunjawate and others, that co-owner or co-sharer of the

property can never claim ownership by adverse possession of the other share. Mere mutation entry or change in any mutation entry does not

confer any title to any immovable property. Merely because the respondent Nos. 1 and 2 were surreptitiously able to manage a change in mutation

entry behind the back of the appellants, the same does not confer any right whatsoever to them. It is very important to note here that it is an

admitted position that the appellants were given no notice whatsoever with regard to the aforesaid change in the mutation entry. Ultimately, in the

year, 1983 when the appellants came to know of same, they got mutation entry changed back again in their own names, with regard to them share

of 2 annas and 8 pie in the said well water.

20. In this case thus Ranjit Singh etc. could not be allowed to acquire title by adverse possession so far as the share of Sanya Devi and Bimla Devi

is concerned, when they are co-heirs of Ramji Dass with them (Ranjit Singh etc.) Ranjit Singh etc. are the sons and daughter of Ramji Dass from

his earlier wife-Thakri Devi while Sanya Devi is later wife and Bimla Devi is Sanya Devi's daughter from Ramji Dass. As between co-heirs the

principles which govern the acquisition of title through adverse possession are different vis-a-vis the principles which govern the acquisition of title

by adverse possession by a stranger over a stranger.

21. It was submitted by the learned counsel, for the appellants that Simla Devi is not daughter of Ramji Dass but she is the daughter of Sanya

Devi's subsequent husband Shankar, whom she married after the death of Ramji Dass.

22. This argument cannot be given any weight in view of the fact that Ramji Dass died on 16-3-1960. A daughter is shown to have born to Sanya

Devi on 20-12-1959 fathered by Ramji Dass in birth entry Ex. P-7.

23. It was submitted by the learned counsel for the appellants that at best, Smt. Simla Devi could ask for 1/5th share, She could not ask for any

share for her mother Sanya Devi when Sanya Devi was never transposed as plaintiff. Learned counsel for the appellants has submitted that no

share reaches Sanya Devi when she is not the plaintiff.

24. Suffice it to say, on application under Order 1, Rule 10, CPC read with Section 151, CPC moved by Bimla Devi, Smt. Sanya Devi was

impleaded as defendant. Sanya Devi put in written statement where through she pleaded that she was entitled to 1/6 share. Bimla Devi was entitled

to 1/6th share. Ranjit Singh etc. were entitled to 2/3 share. She had rather relinquished her 1/6th share in favour of Bimla Devi and, therefore,

decree for joint possession be passed in favour of Bimla Devi qua 1/3rd share and qua the remaining 2/3rd share decree be passed in favour of

Ranjit Singh etc. sons and daughter of Ramji Dass from Smt. Thakri Devi the first wife.

25. It is an inheritance suit. In an inheritance suit, inheritance should take place in accordance with the rules of Hindu Succession Act if the parties

claiming inheritance are Hindus. Even if Sanya devi is not the plaintiff, it has come to the notice of the Court that she is also one of the 6 heirs of

Ramji Dass and, therefore, each of the 6 heirs of Ramji Dass is entitled to have 1/6th share each in the inheritance of Ramji Dass. Our Courts are

Courts of law as well as Courts of equity. In this case, equity demands that the inheritance of Ramji Dass should be mutated in favour of his six

heirs in equal shares in supersession of what has taken place earlier.

26. For the reasons given above, this appeal fails and is dismissed. Decree for joint possession is passed in favour of Bimla Devi in land measuring

208 kanals 14 marlas belonging to Ramjit Dass. Her share will be 1/6th. Similarly, the share of Ranjit Singh, Kashmir Singh, Malkiat Singh and

Kanta Devi sons and daughter of Ramji Dass shall be 1/6 share each. The share of Sanya Devi will also be 1/6. Inheritance of Ramji Dass will be

mutated afresh in the names of his 6 heirs in equal shares.