

(1997) 03 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2859 of 1996

Kuru Ram

APPELLANT

Vs

Hari Singh and Others

RESPONDENT

Date of Decision: March 12, 1997

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 145

Citation: (1997) 116 PLR 59 : (1997) 3 RCR(Civil) 51

Hon'ble Judges: J.L. Gupta, J

Bench: Single Bench

Advocate: M.L. Sarin and Hemant Sarin, for the Appellant; Jaswant Jain, for Respondents 1 to 6, for the Respondent

Final Decision: Dismissed

Judgement

J.L. Gupta, J.

The suit filed by the plaintiff-respondents for a declaration that they are owners in possession of the land measuring 13 Kanals 17 Maria was decreed by the learned trial Court. The appeal filed by defendant No. 1 having been dismissed by the learned appellate Court, he has come to this Court through the present second appeal.

2. In view of the fairly long history of litigation, a few facts deserve to be noticed. Dev Raj was the original owner of the land in dispute. On August 22, 1955, he sold this land to Hukam Chand. Moti Ram, the father of the plaintiff-respondents, filed a suit for possession by pre-emption. On April 16, 1957, the suit was decreed. A copy of the decree sheet is Exhibit P-21. In execution of this decree, the possession of the suit land was delivered to Moti Ram vide report, a copy of which is on record as Exhibit P-1. In spite of that, appellant Kaura Ram got an entry made in the revenue record that he was the owner of the land in dispute and was in cultivating possession thereof. Having come to know of this entry, Moti Ram filed an

application on November 3, 1959, for correction of the Khasra Girdawari. Vide order dated March 20, 1961, a copy of which is on record as Exhibit D-2, the Assistant Collector 1st Grade dismissed this application. Moti Ram then filed a civil suit for possession of the land. The trial Court dismissed the suit. He filed an appeal. Vide judgment dated May 23, 1963, the appellate Court reversed the decision of the trial Court. A copy of the decree sheet is on record as Exhibit P-17. The present appellant filed Regular Second Appeal No. 609 of 1963. Vide judgment dated December 17, 1963, A.N. Grover, J. (as his Lordship then was) dismissed the appeal. A copy of this judgment is on record as Exhibit P-3. Thereafter, actual physical possession of a part of the land in dispute was delivered to Moti Ram vide report dated May 22, 1964. Possession of the remaining land was delivered on June 12, 1964. Copies of these reports are on record as Exhibits P-5 and P-4, respectively.

3. It appears that in spite of having lost before the civil Court, appellant Kaura Ram did not give up. He still succeeded in getting the revenue entries recorded in his favour. It seems that Moti Ram had died. Thereafter, his sons, the present respondents, were forced to file a suit for a declaration that they are owners in possession and that the revenue entries made in favour of the defendants were wrong and their names are liable to be removed "from the column of cultivation" Defendant No. 2 conceded the claim. However, Kaura Ram, who as defendant No. 1, contested the suit. He claimed to have "become owner of the property by adverse possession....." He also claimed that "Shri Moti Ram father of the plaintiffs had sold this property to the answering defendant during his life time and an entry to this effect existed in revenue record and delivered its possession to the answering defendant."

4. The learned trial Court framed nine issues. All the issues were decided in favour of the plaintiff - respondents. It was held that they were owners in possession of the suit property. The plea that he had become owner by adverse possession as raised by the defendant-appellant was rejected. It was held that the suit was within limitation. All the findings recorded by the learned trial Court having been affirmed by the Additional District Judge, the defendant has filed the present second appeal.

5. Mr. M.L. Sarin, learned counsel for the appellant, has vehemently contended that the record clearly establishes his claim of ownership by adverse possession. He has further contended that the suit was barred by limitation as the revenue entries were being challenged after a lapse of more than three years. The claim made on behalf of the appellant was controverted by Mr. Jaswant Jain, who appeared for the plaintiff-respondents.

6. The questions that arise for consideration are:-

- 1) Is the appellant the owner of the land in dispute?
- 2) Was the suit filed by the plaintiff - respondents barred by limitation?

Regarding (1)

7. A perusal of the written statement filed by the appellant shows that in para (3) of the preliminary objections raised by him, he had claimed to have become owner of the property by adverse possession. In para (1) of the reply on facts, he had asserted that "Moti Ram, father of the plaintiffs, had sold this property to the answering defendant during his life time....." When he appeared as a witness to support his claim, he went a step further and stated that he had exchanged turban with Moti Ram. They were brothers. The pre-emption suit had been got filed and the money etc. had been paid by him. The appellant has thus made three different assertions. Each of these claims appears to be unworthy of credence.

8. In para (1) of the written statement, it has been stated that Moti Ram has sold this property to him. No sale deed has been produced. Even the date, month or year of its execution has not been disclosed. The amount for which the property was sold had not been indicated. The plea is apparently false and cannot be sustained. The second plea taken by the appellant is that he had become owner of the property by adverse possession. Even this plea cannot be sustained. In the written statement, the date on which the appellant had claimed himself to be owner has not even been asserted. Learned counsel has not been able even to show that the appellant had claimed himself to be the owner at any point of time. The claim is based only on the entries in the Jamabandis for the years 1957-58 onwards viz. Exhibits D-18 to D-21. Mr. Sarin even asserted that presumption of truth attaches to the entries in Jamabandis. There is no quarrel with this proposition. However, it deserves mention that it is the admitted position that Moti Ram, the predecessor-in-interest of the plaintiffs, had filed a suit for possession by pre-emption which was decreed by the Court vide its judgment dated April 16, 1957. The possession was delivered to him on May 19, 1957. Thereafter, when the appellant had got wrong entries made in his favour, Moti Ram had filed another suit which was dismissed by the learned trial Court on November 20, 1962. However, the appeal filed by Moti Ram was allowed and vide judgment dated May 23, 1963, the suit was decreed. A copy of this judgment is on record as Exhibit P-2. The present appellant has filed R.S.A. No. 609 of 1963, which was dismissed on December 17, 1963. A copy of the decree sheet is Exhibit P-3. Thereafter, possession was actually delivered to Moti Ram in the year 1964. In view of the findings recorded by the Civil Court in both the proceedings, the plea of the appellant based on the revenue entries for the years 1957-58 etc cannot be sustained. Still further, when the revenue entries were made in favour of the appellant, inspite of the findings recorded by the Court, the plaintiff-respondents had filed the suit to challenge the entries. It has not been shown that the appellants had failed to file the suit within a reasonable time after their becoming aware of these entries. In para (4) of the plaint, it was asserted by the plaintiff-respondents that the receipts regarding payment of "revenue and abiana" are with them. It was further asserted by them in para (5) that they had come to know of the wrong entries when they obtained copies of Khasra Girdawari and Jamabandi from the

Patwari Halqa. They had then moved the Tehsildar for correction. Even though para (5) of the plaint was stated to be wrong, it was not asserted that the plaintiffs had come to know of the wrong entries on a particular date. Still further the assertion of the appellant during his cross-examination that Moti Ram was his "Dharam Bhai" and that he had filed the suit for pre-emption at his asking or that the payment had been made by the appellant clearly belies the claim that his possession was open or hostile. In fact, nothing is shown to have been done by the appellant which may indicate an assertion of title. The claim of ownership by adverse possession as made by the defendant-appellant had to be proved beyond reasonable doubt. In this case, his prevaricating attitude bears testimony to the falsehood of the claim. Taking all these facts into consideration, there appears to be no ground to interfere with the concurrent finding of fact recorded by the Courts regarding ownership of the land. Accordingly, the first question is answered against the appellant. It is held that he has not become owner of the property by adverse possession.

Regarding (2)

9. Equally untenable is the plea that the suit was barred by limitation. In this behalf, it deserves mention that in the written statement, it has not been asserted that the plaintiff-respondents had become aware of the entries in the revenue record prior to the year 1982. It has been found as a fact by the courts that the plaintiff-respondents had continued to be in possession of the land. It has also been found that when proceedings u/s 145 of the Criminal Procedure Code were initiated at the instance of the appellant, "the possession of the suit land was not taken from the appellant-defendant but from the respondent-plaintiffs by the receiver appointed as such by S.D.O. (Executive Magistrate)" The plaintiff-respondents having remained in possession, it is not unlikely that the entry made in the revenue record which was not in conformity with the factual position did not come to their notice at the time it was actually made. Otherwise, in view of the long history of litigation, it cannot be imagined that they would fail to assert their claim. The concurrent finding of fact recorded by both the Courts on the plea of limitation, thus, calls for no interference and is rejected.

No other point was raised.

10. In view of the above, no ground for interference is made out. Accordingly the appeal, which is wholly lacking in merit, is dismissed. The respondents shall also be entitled to their costs which are assessed at Rs. 3000/-.