

(1951) 11 P&H CK 0001

High Court Of Punjab And Haryana At Chandigarh

Case No: Second Appeal No. 15 of 2006

Siri Ram

APPELLANT

Vs

Bishan Singh and another

RESPONDENT

Date of Decision: Nov. 12, 1951

Hon'ble Judges: Chopra, J

Bench: Single Bench

Advocate: P.L. Handa, for the Appellant; S. Kartar Singh, for the Respondent

Final Decision: Allowed

Judgement

Chopra, J.

This appeal has arisen out of a suit brought by Siri Ram for possession of 8 bighas of agricultural land on the allegation that it formed part of Khasra No. 1028 which belonged to him and that the defendants had taken possession of it by including it to their adjoining fields Nos. 1029 and 1030. The defendants' plea was that they were the owners of the land in dispute and that the plaintiff had never any thing to do with it. It was also pleaded that the plaintiff's suit was barred by time. The trial Court granted a decree in favour of the plaintiff. The learned District Judge on appeal by the defendants has thrown out the suit on the ground that the plaintiff had not proved his possession within the statutory period of twelve years before bringing the suit. This is plaintiff's second appeal.

2. As regards the ownership of the land there can be little dispute. Both the Courts below have found that it belonged to the plaintiff and that finding is not contested before me. In the year 2002 the plaintiff applied to the revenue authorities for determination of the correct boundaries of his field No. 1028. The local qanungo and the patwari after measurement at the spot, found that 8 bighas of land out of Khasra No. 1028 had joined with Khasra Nos. 1029 and 1030 which belonged to the defendants. A plan of the fields showing the encroachment made by the defendants was also prepared. After the report of the Qanungo, dated 8-11-2002, the application of the plaintiff was consigned to the record room and the latter was left

to take proper steps to get possession of the land. He then brought the present suit on 4-5-2003. As already observed, the plaintiff based the suit on his title and alleged that the defendants were in illegal possession of the land which belonged to him. The defendants, on the other hand, denied the plaintiff's title and alleged that they were the real owners. On these pleadings the plaintiff was called upon to prove that he was the owner of the land, and that it had been unlawfully encroached upon by the defendants. The plaintiff examined the patwari who had made measurements and submitted a report on his application to the revenue authorities. The relevant papers were proved by him to be correct. Parbhu Mal and Bachna Ram to whom Khasra No. 1028 had been mortgaged by the plaintiff, were also produced to prove plaintiff's title and they supported the plaintiff's claim. Parbhu Mal further stated that the defendants had encroached upon the land bits by bits. Bachna Ram admitted that the defendants were in possession of it since long. In rebuttal Bishen Singh, one of the defendants, put himself in the witness-box and deposed that he was in possession of the suit land for the last sixty years.

3. The question of title being not in dispute it has to be seen whether, as observed by the learned District Judge, it was necessary for the plaintiff also to prove that he had been dispossessed by the defendants within twelve years of the suit. This is a case in which the plaintiff sued on the strength of his title without reference to prior possession or dispossession. In such a case, the plaintiff would be entitled to succeed on the proof of his title, unless the defendant was able to displace it by proof of adverse possession by himself or his predecessor in title for the whole statutory period. In a suit within Article 144 the initial onus on plaintiff is to establish his title and he is not under any obligation to prove his possession within twelve years of the suit. When the plaintiff's title has been proved or is admitted the burden is on the defendant to establish that he, or persons through whom he claims, has or had been in possession adverse to the plaintiff for over twelve years before the suit. The defendant has also to prove when his possession became adverse. It is a settled law that the onus of establishing title to property by reason of possession for a certain requisite period lies on the person asserting such possession. I do not agree with the contention of the learned Counsel for the respondent that it is Article 142 of the Limitation Act that applies to this case. The suit, as already observed, was on the basis of title of the plaintiff and not on the basis of his former possession and dispossession thereafter. The rule that the plaintiff must prove his possession within twelve years of the suit, applies only to the case of a plaintiff basing his claim on his prior possession. Consequently, where the plaintiff bases his claim on title it is for the defendant to establish his adverse possession over a period of twelve years. The residuary Article 144 must, therefore, govern the facts of the present case.

4. Now, as regards the adverse possession of the defendants it must, in the first instance, be observed that no such plea was taken by the defendants in the written statement. There they did not plead that the original owner had lost his title

because of their continued adverse possession and that they had thereby become owners of the land. No issue on the point was consequently framed. Under the circumstances the learned District Judge was not right in making out a new case for the defendants, which the plaintiff had no time to meet or rebut.

5. There is no evidence also that the possession of the defendants had been open and under assertion of a title hostile to the real owner for the statutory period of twelve years. It does not stand proved when the defendants included the plaintiff's land to their own adjoining fields. The encroachment might have been made by bits as stated by one of the plaintiff's witnesses. At the time or times the encroachment came into existence the defendants themselves might not have been sure as to where the boundary of their fields fell. Even a little inadvertent or accidental change of the position of the "Doll" separating the fields of the parties to one side for some length, could have resulted in adding a part of plaintiff's land to the fields of the defendants. Measurements at the spot on the plaintiff's application to the revenue authorities revealed that the intervening "Doll" had been slightly removed towards the north and that this had caused the inclusion of 8 biswas of plaintiff's land to the fields of the defendants. In view of these facts and in the absence of clear and cogent evidence, it cannot be said that the defendant's possession over the suit land was open and hostile to the plaintiff and that it had ripened into ownership by prescription. The solitary statement of the defendant that they had long been in possession of the land would not be enough. In my opinion, therefore, the District Judge was not right in throwing out the plaintiff's suit on the ground of adverse possession of the defendants.

6. The appeal is, consequently, accepted with costs, the decree of the District Judge set aside and that of the trial Court restored.