

(1995) 03 P&H CK 0013

High Court Of Punjab And Haryana At Chandigarh**Case No:** Regular Second Appeal No. 2224 of 1979

Jai Singh

APPELLANT

Vs

Mehar Singh

RESPONDENT

Date of Decision: March 14, 1995**Citation:** (1995) 2 CivCC 640 : (1995) 111 PLR 349**Hon'ble Judges:** H.S. Bedi, J**Bench:** Single Bench**Advocate:** A.L. Bansal and Arun Bansal, for the Appellant; Hemant Sarin, for the Respondent**Final Decision:** Dismissed

Judgement

H.S. Bedi, J.

The present appeal has been filed at the instance of the defendants in the suit. The subject matter of the controversy is land measuring 83 kanals and 10 marlas, situated in village Bhag Singh Wala, Tehsil and District Faridkot. The parties to the litigation are descendants of a common ancestor Man Singh. The case of the plaintiffs-respondents Mehar Singh and Kehar Singh is that the land which is the subject matter of dispute, though originally belonged to the family of Man Singh, had come to their ownership on account of adverse possession. In answer to this plea in the plaint, it was denied that the plaintiffs had become owners by adverse possession. On the pleadings of the parties, the following issues were framed :-

1. Whether the defendants have lost their title to the land by abandonment ? OPP.
2. Whether plaintiffs have become owner by adverse possession ? OPP.
3. Relief.

2. The learned trial Court took up issue No. 2 first and decided the same against plaintiffs-respondents, holding that they had failed to prove that they had become owners by adverse possession. Issue No. 1 was also decided against the

plaintiffs-respondents, holding that the defendants-appellants had not lost title to the land by abandonment. The suit was accordingly dismissed. On appeal taken to the first appellate Court, Issue No. 1 was not assailed, whereas issue No. 2, which is material one, was forcefully argued. The first appellate Court came to the conclusion that the plaintiffs-respondents were liable to succeed on two grounds primarily : firstly, that in the document Exhibit P-12 filed in the earlier litigation between the parties, the title of the appellants had been denied ; and secondly, that the fact that no rent had been paid by the plaintiffs for a period of 30 to 40 years indicated that the ouster had taken place from the land in question. It was also mentioned that the copy of the jamabandi for the year 1967-68 showed that the respondents herein were in possession of the land in suit without payment of any rent. As a result of the finding on issue No. 2, the appeal was accepted and the suit decreed. Aggrieved thereby, the defendants have come to this Court by way of second appeal.

3. Mr. A.L. Bansal, learned counsel for the appellants, has argued on the basis of the judgments in *Mst. Bui (deceased) represented by Legal Representatives v. Gurdip Singh* (1976) 78 P.L.R. 461, *Joginder Pal alias Joginder Pal v. Angad Singh and Ors.* (1983) 85 P.L.R. 429, *Surjan Singh and Ors. v. Gurdev Kaur and Ors.* 1985 P.L.J. 611, and *Kehar Singh and Ors. v. Ishwar and Ors.* 1986 P.L.J. 155, that merely because no rent had been paid by the co-sharers was not conclusive of the fact that the ouster had taken place. He has also urged that in Exhibit P-12 referred to above, there had been no specific denial of the title of the respondents. Mr. Hemant Sarin, learned counsel for the respondents, has, however, supported the reasoning of the lower appellate Court.

4. After hearing the learned counsel for the parties, I find no merit in the appeal. It is undoubtedly true, as has been urged by Mr. Bansal, that the mere fact that rent had not been paid by the co-sharers, would not be conclusive that an abandonment had taken place so as to prove the factum of adverse possession, but as already indicated above and held by the lower appellate Court, the rent had not been paid over a period of 30-40 years. It is also significant that the title of the appellants was denied in Exhibit P.12 but they nevertheless made no effort to enforce their rights in the property.

5. For the reasons recorded above, there is no merit in this appeal and the same is dismissed.