

(1992) 01 P&H CK 0017

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Regular Second Appeal No. 1154 of 1979

Karam Chand and Others

APPELLANT

Vs

Jaswant Rai and Others

RESPONDENT

Date of Decision: Jan. 21, 1992

Acts Referred:

- Administration of Evacuee Property Act, 1950 - Section 46

Citation: (1992) 102 PLR 133

Hon'ble Judges: N.K. Kapoor, J

Bench: Single Bench

Advocate: P.N. Aggarwal, Nos. 1 and 3, for the Appellant; H.L. Sarin and Alka Sarin, for the Respondent

Final Decision: Dismissed

Judgement

N.K. Kapoor, J.

This is defendant's appeal against the judgment and decree of the District Judge by which the judgment and decree of the trial Court has been affirmed whereby suit of the plaintiffs for possession was decreed.

2. Brief facts of the case are that the plaintiffs sought possession of the land measuring 5 Kanals 11 Marlas situated in Village Dharamkot from the defendants on the ground that they purchased the property vide registered sale deed dated 21st July, 1960 Exhibit P-I.

3. Defendants No. 1 to 4 put in appearance and filed written statement controverting all the allegations as contained in the plaint. It was further pleaded that one Khair Din, a mohammedan, resident of village Dharamkot was originally the owner of land measuring 7 Kanals 9 Marlas which was in possession of Punjab Singh, predecessor-in-interest of the contesting defendants. It was further averred that possession of Punjab Singh was adverse to Khair Din and continued so till the partition of the country. The defendants further contended that Punjab Singh

remained in possession of the disputed land for more than 12 years before the partition of the country" and as such had become owner of the same.

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

"1. Whether the plaintiffs were owners with possession of the suit land ? OPP.

2. Whether Punjab Singh son of Deva Singh came into possession of the suit land adversely to Khair Din the original owner as alleged in para 10 of the written statement and remained in possession for more than 12 years openly, hostilely and without any objection from Khair Din till to date ? OPD.

2-A. Whether the plea of adverse possession cannot be entertained by the Court in the present case ?

3. Relief"

5. The plaintiffs in support of their case adduced in evidence copy of allotment order Exhibit P-2 by which proprietary rights in respect of the land were conferred on Kishan Singh, successor-in interest of Karam Singh and Rajinder Singh the vendors, from whom the plaintiffs purchased the land on the basis of sale deed dated 21.7.1960 Exhibit P-1. Besides copy of Sanad dated 14th September, 1955 Exhibit P-6 was placed on record. The trial Court on the basis of evidence adduced decided issue No. 1 in favour of the plaintiffs.

6. The defendants with a view to prove that they had become owners by way of adverse possession placed on record the copies of jamabandies for the years 1927-28, 1931-32, 1939-40 and 1943 -44 to content that possession of Punjab Singh over the land was without any payment of rent etc. Entries in revenue record for the period 1967-68 and 1972 73, however, recorded the names of the plaintiffs as owners in the column of ownership. As regards the nature of land, the same is recorded as Banjar Qadim in both the above-referred Jamabandies. In copy of khasra girdawri for the year 1970-71 Exhibit P-5 disputed land was shown to be in possession of one Sardara Singh on Batai. The trial Court taking into consideration the fact that the land is recorded as Banjar Qadeem as per entries in the jamabandies for the years 1967-68 and 1972-73 repelled the contention of the defendants that they were in possession of suit land without payment of any rent. Thus finding no merit in the contentions, of the defendants, the trial Court decided issue No. 2 against the defendants, under issue No. 2-A. Whether plea of adverse possession cannot be entertained by the Court in the present case the trial Court came to the conclusion that Section 46 of the Administration of Evacuee Property Act (hereinafter referred to as "the Act") bare adjudication of such a claim in a civil Court. Thus in view of the findings in respect of issue No. 1, the trial Court decreed the suit of the plaintiffs.

7. Before the appellate Court the matter was once again examined in its entirety. The sole contention raised before the lower appellate Court was that the trial Court

should have framed an issue on the point whether any notice was issued to Punjab Singh predecessor-in-interest of the appellants before declaring this property as an evacuee property. Since Section 46 of the Act bars jurisdiction of the Civil Court from entertaining or adjudicating upon any question whether any property or any right to or interest in any property is or is not evacuee property and it is within the exclusive jurisdiction of the Tribunal constituted under the Act and whose decision is final on issues of law as well as facts, the lower appellate Court held that Civil Court had no jurisdiction to adjudicate as to whether the property in dispute was an evacuee property or not. Since no other point was urged by the appellants, the lower appellate Court dismissed the appeal being without any merit.

8. The learned counsel for the appellants has assailed the findings of the Courts below on the ground that no notice was issued to Punjab Singh before declaring the property as an evacuee property and as such any declaration made by an authority under the Act does not bind the appellants in any manner. He further urged that there is no notification as to the declaration of this property as an evacuee property in terms of Section 7 of the Act and in the absence of the same the authorities erred in law in treating the suit property to be an evacuee property. Besides the learned counsel urged that there is ample evidence on record by which it is proved that the appellants had perfected their title being in possession without paying of any rent for the last more than 12 years.

9. Much emphasis has been laid by the learned counsel for the appellants on the point that in the absence of any notice to Punjab Singh treating the property to be an evacuee property and allotting the same to Kishan Singh was per se illegal and the Courts below erred in law in assuming the property to be an evacuee property which subsequently was purchased by the plaintiffs by means of registered sale deed dated 21st July, 1960 Exhibit P 1. Section 46 of the Act bars the jurisdiction of Civil Court to adjudicate the point as to whether any property is an evacuee property or not and in this view of the matter the lower appellate Court rightly refrained from, adjudicating upon the same. This matter stands settled by the apex Court's pronouncement in [Custodian of Evacuee Property Punjab and Others Vs. Jafran Begum](#), wherein it was held : -

"(Where) the question whether certain properties are evacuee properties has been decided u/s 7 etc., whether that decision is based on issues of fact or issues of law, jurisdiction of courts is clearly barred u/s 46(a). It is difficult to see now a distinction can be drawn between decisions u/s 7 based on questions of fact and decisions based on questions of law. The decision is made final whether based on issues of law or of fact by Section 28 and Section 46 bars the jurisdiction of civil and revenue courts in matters which are decided u/s 7 whichever may be the basis of decision, whether issues of fact or of law and whether simple or complicated."

10. The next contention of the learned counsel for the appellants that they had perfected their title for being in possession of the suit land for more than 12 years

without payment of any rent to the real owner, is also without any merit As observed by she trial Court land remained Banjar Qadim as per jamabandies for the years 1968- 69 and 1972 73 and as per copies of khasra girdawaries for the year 1972-73 one Sardara Singh was shown to be in possession of the suit land on payment of Batai". According" to Land Revenue Assessment Rules of 1929 uncultivated land which has remained unsown for four successive harvests is classified as Banjar Jadid land ; where as the land which has remained unsown for eight successive harvests, is described as Banjar Qadim. Thus, on the basis of this evidence the trial Court found no merit in this plea of the defendants. As observed by the lower appellate Court, no such point was even raised before it. This finding being otherwise finding of fact calls for no interference in Regular Second Appeal.

11. Thus finding no merit in this appeal I hereby dismiss the same. No costs.