

Man Singh and Others Vs Telu and Others

Second Appeal No"s. 151 to 153 and 202 to 205 of 1963

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 8, 1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Section 100 , 101#Limitation Act, 1908 " Article 142 , 144#Limitation Act, 1963 " Article 64 , 65

Citation: AIR 1967 P&H 252

Hon'ble Judges: D.K. Mahajan, J

Bench: Single Bench

Advocate: Kedar Nath Tewari, for the Appellant; Dalip Chand Gupta, for the Respondent

Final Decision: Dismissed

Judgement

D.K. Mahajan, J.

This order will dispose of Regular Second Appeals Nos. 151 to 153 of 1983 and 202 to 205 of 1983. Initially eight

suits were filed by different plaintiffs against different defendants. But as the main facts were identical in all the suits; by agreement of parties, the

suits were consolidated and evidence was recorded in one suit, namely, suit No. 255 of 1963 Rai Singh and Ors. v. Sardara and Ors. All the suits

were disposed of by one judgment by the trial Court as well as by the lower appellate Court on appeal. So far as suit No. 248 is concerned, no

second appeal has been preferred. That suit was dismissed on the short ground that it was barred by the rule of res judicata in view of the previous

decision inter partes. Exhibits D. 1 and D. 2. The present second appeals are in the remaining seven suits.

2. The facts leading to these suits may now be stated. The plaintiffs claim that they are co-sharers with the defendants in the land in dispute in each

of the suits and that during me consolidation proceedings in the year 1959-60, when they asserted their rights to the land in dispute, their title to it

was denied by the defendants. Accordingly they were driven to the present suits for joint possession of the land. The defendants in each of these

suits set up the plea that the plaintiffs' ancestors had abandoned the land more than about 140 years ago, that is, in the year 1826. The suits were

filed in the middle of 1961. The defendants also pleaded that they had become owners by adverse possession. On the pleadings of the parties, the

following issues were framed :--

- (1) Whether the plaintiffs have abandoned their rights, if any, in the suit land? If so, with what effect?
- (2) Whether the defendants have become owners by adverse possession?
- (3) What is the effect of previous litigation, if any, between the parties or their predecessors-in-interest?
- (4) Whether the plaintiffs are co-sharers with the defendants?

The trial Court held that the ancestors of the plaintiffs had abandoned their rights in the suit land; that the defendants had become owners of the

land by adverse possession; that suit No. 248 was barred by reason of res judicata but not the other suits and that the plaintiffs were no longer co-

sharers with the defendants. In this view of the matter, all the suits were dismissed. Against the dismissal of these suits, eight appeals were

preferred to the lower appellate Court. The lower appellate Court also affirmed the findings of the trial Court on all the issues and dismissed the

appeals. Barring suit No. 248, all the other plaintiffs in the remaining seven suits have preferred the present second appeals.

3. Mr. Kedar Nath Tewari, learned counsel for the appellants, has strenuously contended that the Courts below have erred in law in holding that

the defendants have succeeded in proving that the plaintiffs or their ancestors abandoned the land in dispute. The contention of the learned counsel

is that the onus to prove abandonment is on the defendants and that there is no presumption in favour of abandonment. He further lays great stress

on the fact that the plaintiffs and defendants were co-sharers when the plaintiffs or their ancestors left the village; that the defendants did not, by any

overt act, assert their hostile title to the land and that mere long absence from the land would not prove abandonment. Mr. Dalip Chand Gupta,

learned counsel for the respondents, on the other hand contends that the question whether there is abandonment or not is a question of fact and the

concurrent decisions of the Courts below on that question would be final in second appeal and would not be open to attack. The learned counsel

further contends that, on the facts and circumstances proved in this case, abandonment has been amply proved. These are the respective

contentions which fall for determination in the present appeal

4. The courts below have found in favour of abandonment on the basis of the following six circumstances :--

(i) that the ancestors of the appellants deserted the lands and houses as well as the village Chhatar, wherein the said lands are situated, in or about

the year 1836 i.e., about 125 years before the institution of the suits; (ii) that they (the appellants and their ancestors) had acquired lands in village

Seemla and had also built houses there and had been residing there for more than a century;

(iii) that they never resided in village Chhatar or personally cultivated or leased put the lands situated within the limits of village Chhatar during the

said period, although the village Seemla is at a distance of about eleven miles from village Chhattar.

(iv) that the appellants or their ancestors never paid land revenue of the lands and did not take any interest in the development or cultivation of the

same;

(v) in suits Nos. 250, 255 and 256, the defendants or some of them had effected alienations of certain lands by mortgage, sale or gift and the same

were never challenged by the appellants or their ancestors.

(vi) the land of Shamilat of Patti Ramna was partitioned and the respondents had been allotted lands during the said partition and that the appellants

were not recorded as owners of the lands, which had been then given to the respondents.

None of these facts has been controverted by the learned counsel for the appellants. The only challenge, that has been raised by Mr. Tewari, is to

ground No. (vi) on the basis that the partition of the Shamilat was a private partition. He further maintains that there is no evidence in support

thereof. I am not prepared to accept the latter statement, namely, that there is no evidence to support the partition. The evidence of the Patwari is

there and that evidence has been accepted by the Courts below. There are also statements of the other witnesses to that effect. But his contention,

that the partition was a private partition, appears to be correct. Therefore, the fact remains that Shamilat was partitioned and no part of it was

recorded in the names of the plaintiffs, whereas the proprietary land has been recorded in the revenue papers in the names of the descendants of

the original owners who abandoned the same.

5. So far as the legal position is concerned, there can be no dispute that abandonment is a question of fact and it can be inferred or proved from

circumstances or from circumstantial evidence. In some cases, there can be no direct proof of abandonment. In certain cases, there may be direct

proof of abandonment; but in large number of cases, that have been cited at the bar, abandonment was held to have been established or not

established from the circumstances alleged or proved in those cases. It is also true that normally the Courts are not inclined to deprive an owner of

valuable property on the ground that he has lost his right to it by mere abandonment. But in each case, the question has to be determined on the

facts of that case whether abandonment has or has not been proved. Decided cases merely furnish a guide. But no two cases have similar facts

from which a mathematical conclusion could be drawn. What has weighed with me to hold in favour of abandonment is :--

(1) That the ancestors of the plaintiffs gave up cultivation of the land in dispute in the year 1836; but they did not give up their Connection with land

in that year. On the contrary, they only shifted 11 miles away to village Seemla where they acquired landed estates and settled thereon; built their

houses and started agricultural operations. There is no history or any other evidence of village Chhatar, which they abandoned, indicating the

reasons which led them to abandon the same.

The reason may be that the land was unproductive; that their holdings may be too small or too uneconomical or that they were not pulling on with

their co-sharers. These are all conjectures and there is no evidence one way or the other to indicate why the ancestors of the plaintiffs gave up

cultivation in village Chhatar though they still continued their agricultural pursuits in the village in which they settled after quitting Chhatar.

(2) Three settlements have taken place during the period from 1836 to 1949-1950. In neither of these settlements, it is shown that any interest was

taken by the plaintiffs. Moreover, in the revenue records prepared in each one of these settlements, It is recorded as follows :--

First Settlement

Mafrur"" (Absconders)

Second Settlement

Ghair Hazir"" (Absentees)

Third Settlement

Ghair Kabaz"" (Out of possession).

The only fact, that goes in favour of the plaintiffs, is that their descendants have been recorded in the revenue papers as owners or the lands along

with the defendants. Barring this, no interest has been taken by the plaintiffs either in cultivation of the land or in the management of the land or in

the payment of the revenue of the land or in any other manner, and

(3) That in case I accept the suggestion of Mr. Tewari, that the plaintiffs were asserting their rights to the land In the manner that on the death of

any one of their ancestors they were asking for the land in the village to be mutated in the name of his descendants, there is no explanation

whatever why at the time, when the Shamilat was partitioned and their names were excluded they took no interest in the matters.

The fact remains that in the revenue records, a stage came when the names of the plaintiffs ceased to occur as owners of the Shamilat and they

took no steps whatever to rectify that wrong entry. This fact really leads me to accept the contention of Mr. Dalip Ghana Gupta that the names of

the descendants of the deserters, were entered in the revenue records not at the instance of the plaintiffs but at the instance of the defendants. As

an Instance, I may refer to a decision in Mt. Nihal Koer v. Chanda Singh 118 Pun Re 1893, wherein a similar fact was proved, namely, that the

descendants of the deserters were shown as owners in the revenue records, but it was found that they were shown as such at the instance of the

persons who remained in the village and no inference against abandonment was drawn in that case from the mere fact that the names of the

descendants of the deserters were still found in the revenue records or were, from time to time, recorded in the revenue records.

Along with this material, there is the statement of P. W. 2, Rai Singh. In cross-examination, he was constrained to admit that Ghandgi had sold part

of the land in dispute. He also admitted that the land revenue was being paid by the defendants because the land had been left with them and that it

had been given over to them for the purposes of cultivation and reaping benefit therefrom.

(5-a) The matter does not rest here. In the year 1937, the ancestors of the plaintiffs, in suit No. 248, asserted their right to the land in that suit and

it was held that they could not claim the land because their ancestors had abandoned the same. It is no doubt true that this decision would not be

res judicata so far as the other seven suits are concerned but this litigation would give rise to one inference, namely, that the plaintiffs or their

ancestors in other suits must have known that a suit to assert a right to the abandoned land had been filed by the ancestors of plaintiffs in suit No.

248 and that it had failed in 1939. This seems to be a test case and explains why from the year 1939 to the year 1961, when the present suits were

filed, no steps were taken by any one of the plaintiffs in the remaining seven suits to recover possession of the land. For the first time, they seem to

have asserted their right in the year 1959-60, when the consolidation proceedings started. But their inertia to claim the land in dispute from the year

1937 to 1959--nearly twenty years--speaks for itself,

6. Therefore, from whatever aspect the matter is examined, there can be no dispute so far as the facts of the present cases go that abandonment

has been proved to the hilt. Moreover, the question of abandonment is a question of fact and a concurrent decision of the Courts below on the

same is binding on me in second appeal.

7. I have purposely refrained from referring to a large number of decisions cited at the bar because each one of those cases had turned on its own

peculiar facts. On general principles, which I have already stated, there is no dispute. In any case, if on a given set of circumstances, two inferences

are possible, the one adopted by the Court of First Appeal is binding so far as the Court of Second Appeal is concerned. Even if I were to agree

with the contention of Mr. Tewari that on these facts it is possible to hold that abandonment is not proved, it will be of no help to the learned

counsel because on these facts the opposite conclusion is also equally possible and the lower appellate Court has drawn the same.

8. For the reasons recorded above, these appeals fail and are dismissed; but there will be no order as to costs.