
Before Satish Kumar Mittal, J.

CHARAN DASS & OTHERS,—*Plaintiffs/Appellants*

versus

RAJINDER PAUL,—*Defendant/Respondent*

R.S.A. No. 4074 of 2001

19th February, 2003

Limitation Act, 1963—Arts. 64 & 65—Continuous, uninterrupted, hostile & open possession of suit property since 1947—Claim to title by way of adverse possession—Custodian department releasing suit property on an application by real owner—Possession of plaintiffs well within knowledge of real owner—No evidence to show that real owner taking any legal steps to take back possession of property—Mere denial of title of real owner on suit property by plaintiffs does not disentitle them to claim adverse possession—Findings of first appellate Court dismissing suit of plaintiffs not sustainable and liable to be set aside.

Held, that it cannot be said that Bhagat Ram was having no knowledge of the possession of the plaintiffs—appellants over the suit property. It is the case of defendant-respondent himself that the property in question was wrongly treated as evacuee property by the custodian department and only on the application of Bhagat Ram the property was released by the Custodian department,—*vide* order dated 25th September, 1962. This fact clearly indicates that prior to the passing of the order of release, Bhagat Ram was aware that the plaintiffs-appellants were in possession of the property in dispute. Secondly, at least after passing of this order of release, Bhagat Ram having the knowledge of adverse, hostile, and open possession of the plaintiffs-appellants on the suit property.

(Para 10)

Further held, that hostile possession of the plaintiffs-appellants was in the knowledge of the real owner and after his death in the knowledge of his son i.e. the defendant-respondent. Therefore, I am of the opinion that mere denial of the title of Bhagat Ram on the suit property by the plaintiffs-appellants does not disentitle them to claim adverse possession and the findings recorded by the first appellate court in this regard are not sustainable in the eyes of law.

(Para 12)

Further held, that though from the receipt, it cannot be said that the disputed property was rented out to the plaintiffs-appellants by the Custodian Department, but if for the sake of arguments it is taken that their possession was permissive as they were permitted by the Custodian Department to occupy the property in dispute, then their permissive possession became hostile when the property in dispute was released by the Custodian Department,—*vide* order dated 25th September, 1962. In my opinion that is the starting point of the adverse possession of the plaintiffs-appellants.

(Para 13)

M.L. Saggur, Advocate

R.S. Bajaj, Advocate, for the appellants.

Arun Palli, Advocate, for the respondent.

JUDGMENT

SATISH KUMAR MITTAL, J.

(1) The instant Regular Second Appeal has been filed by the plaintiffs against the judgment and decree dated 9th May, 2001, passed by learned Additional District Judge, Jalandhar,—*vide* which the appeal of the defendant against the judgment and decree dated 21st January, 1995 passed by learned Sub-Judge IInd Class, Jalandhar was accepted and the suit filed by the plaintiffs for declaring them as owners on the basis of adverse possession was dismissed.

(2) The brief facts of the case are that the plaintiffs-appellants filed suit for declaration for declaring them as owners of the property in dispute on the basis of adverse possession alleging therein that they migrated from Pakistan and came to India in the year 1947. At that time, the suit property was lying vacant and only three kacha rooms were existing thereon. The plaintiffs-appellants settled over the said property and raised construction over the same from time to time. It was alleged that since then they are in peaceful, uninterrupted and hostile possession of the suit property as adverse to the owner of the land underneath for the last more than 12 years and therefore, they have become joint owners by way of adverse possession. The defendant-respondent has now started making illegal and baseless declaration claiming ownership over the suit land and constructions made over the same and threatened to dispossess them with the help of local police, therefore, the present suit was filed by the plaintiffs-appellants.

(3) The defendant-respondent contested the suit by pleading that the property in dispute was earlier owned by his father Bhagat Ram. It was in possession of Muslim tenants, who fled to Pakistan in 1947. The Custodian Department treated this property as evacuee property and allotted the same to the Refugees, who were coming from Pakistan. It was pleaded that the property in question was wrongly treated as evacuee property and when Bhagat Ram pointed out this fact to the Custodian Department, the property in question was released,—*vide* order dated 25th September, 1962 passed by Assistant Custodian, (General), Jalandhar. It was further pleaded that after the release of the said property by the Custodian Department, Bhagat Ram moved application before the custodian authorities for putting him in actual possession of the property where the plaintiffs-appellants and their predecessors raised many objections, which were rejected. After the death of Bhagat Ram, the defendant-respondent inherited the property and approached Custodian department for ejecting the plaintiffs-appellants from the property in question. Therefore, it was pleaded by the defendant-respondent that he is proceeding in accordance with provisions of law for getting the property back from the plaintiffs-appellants, therefore, the suit filed by them is not maintainable and they cannot be said to have become owners of the property by way of adverse possession.

(4) On the pleadings of the parties, the trial court framed various issues including issue No. 1 to the effect as to whether the plaintiffs have become owners of the property in dispute by way of adverse possession. After taking into consideration the evidence led by both the parties and after hearing learned counsel for the parties, learned trial court decreed the suit of the plaintiffs-appellants while holding that the plaintiffs have become owners by way of adverse possession and observed as under :

“I am of the considered view that the plaintiffs have proved their possession with effect from 1947, over the property in dispute. The intervening order Ex. D2 passed by the Assistant Custodian (General) on 30th April, 1962, further shows that the real owner namely Bhagat Ram s/o Ralla Ram, was not in possession and the property was released from the purview of evacuee property. The possession of the plaintiffs was, therefore, adverse

against the true owner namely Bhagat Ram. The order Ex. D2 does not alter the nature of the property from evacuee property to the property of Bhagat Ram, but simply declares it to be the ownership of Bhagat Ram. The conclusion of my above discussion is that the property was not a part of evacuee property. The same was occupied by the plaintiffs with effect from the year 1947 and the possession remained continuous before and after the passing of order Ex. D2 on 30th April, 1962. The defendant was well aware of the possession of the plaintiffs before and after 30th April, 1962 and has failed to show that the possession of the plaintiffs was not adverse to the true owners. The plaintiffs have therefore, proved that they have become the owners of the property in dispute, by way of adverse possession. This issue is therefore, decided in favour of the plaintiff.”

(5) Feeling aggrieved, the defendant-respondent filed appeal against the judgment and decree passed by the trial court. The first appellate court, though confirmed the finding of the trial court to the effect that the plaintiffs-appellants are in continuous possession of the property in dispute since 1947 and have also raised construction on the disputed land and are residing therein, but dismissed their suit while observing that their continuous and hostile possessions was not open to the knowledge of the true owner. It has been held that the plaintiffs-appellants have not expressly or impliedly denied the title of the defendant-respondent either in the plaint or in their evidence. Actually, they had taken the stand that the defendant-respondent is not the owner of the property in question. It was nowhere stated that Rajinder Pal and earlier his father Bhagat Ram was the owner of the property in question. Therefore, they were not able to plead and prove the ingredients of adverse possession and their suit for declaring them as owners of the disputed property by way of adverse possession cannot be decreed. It has been further held that the property in dispute was released by the Assistant Custodian (General),—*vide* order dated 30th April, 1962 (Ex. D2), who directed the authorities to restore the possession of the disputed property to Bhagat Ram. It has also been held that the said order was not challenged by the plaintiffs-appellants and the defendant-respondent was taking possession of the suit property in due course of law through the Custodian department, therefore, the plaintiffs-appellants are not

entitled to be declared as owners of the suit property by way of adverse possession. The aforesaid judgment and decree passed by the appellate court has been challenged by the plaintiffs—appellants in the present Regular Second Appeal.

(6) Learned counsel for the plaintiffs—appellants submitted that it has been clearly established on record that the plaintiffs—appellants are in continuous possession of the disputed property since 1947. He further submitted that possession of the plaintiffs—appellants was open and hostile as after entering into possession of the property in question, they raised construction on the same and are residing therein as owners. Even in the written statement, it has been averred by the defendant—respondent that the property in question was lying vacant in the year 1947 when the tenant of his father, namely Bhagat Ram, had fled to Pakistan. It has also been stated that the Custodian department wrongly treated this property as evacuee property and allotted the same to the Refugees from Pakistan. The property was released by the Custodian department only when Bhagat Ram made the application to the Custodian department pointing out that the property did not belong to any Muslim. Thereupon,—*vide* order dated 25th September, 1962 (Ex. D2), the property in question was released by the Custodian department. In view of the aforesaid pleadings, learned counsel for the plaintiffs—appellants argued that at least from 25th September, 1962, the possession of the plaintiffs—appellants on the suit land was adverse and hostile to the knowledge of the true owner, namely Bhagat Ram, as after that date he did not take any step to take back possession of his property from them. Though it was pleaded by the defendant—respondent that after the passing of the order of release, Bhagat Ram after his death, the defendant—respondent were taking steps in due course of law for taking possession of the land in question, but no evidence or any order passed by a competent authority to restore possession of this land has been produced in evidence. Learned counsel, while referring to para 21 of the judgment of the appellate court, has submitted that a wrong finding has been recorded that the defendant—respondent is taking action before the custodian authorities for delivery of possession, but there is no evidence to this effect on the record. Learned counsel for the plaintiffs—appellants further submitted that before the year 1962 and thereafter Bhagat Ram and the defendant—respondent were in clear knowledge that the plaintiffs—appellants were in possession of the disputed property and they had raised construction thereon like

an owner. But they did not take any step to take back the possession from the plaintiffs—appellants till the filing of the suit. In view of the aforesaid facts and evidence available on the record, learned counsel for the plaintiffs—appellants submitted that his clients have clearly established on record that they are in continuous, uninterrupted and hostile possession of the property in question and their title on this land has been perfected by way of adverse possession. He submitted that merely because the Custodian department passed the order of release Ex.D2, that does not interrupt their possession. In support of his contention, learned counsel relied upon the decision of Hon'ble Supreme Court in ***Balkrishan versus Satyaprakash and others.*** (1)

(7) In reply, learned counsel for the defendant—respondent submitted that even the plaintiffs—appellants did not plead the bare minimum ingredient for claiming adverse possession. No specific date of starting of adverse possession has been mentioned. In the plaint as well as in the replication, the plaintiffs—appellants have also denied the ownership of the defendant—respondent and claimed themselves to be the owners of the suit property. Learned counsel further submitted that Ex.D3, which is rent receipt for the year 1958,—*vide* which some rent was paid by some of the plaintiffs—appellants to the Custodian department, establishes that possession of the plaintiffs—appellants on the land in question was as of the tenant, which was permissive and the same never turned to be hostile at any point of time. He further submitted that the defendant—respondent was taking possession of the land in question by way of legal proceedings, which were initiated long back after the passing of order of release by the Custodian department, therefore, possession of the plaintiffs—appellants has not become adverse; and they cannot be declared owners of the disputed property on the basis of adverse possession. In support of his contention, he relied upon ***Mt. Bhago versus Deep Chand Harphul and others,*** (2) ***Wg. Crd. (Retd.) R.N. Dawar versus Shri Ganga Saran Dhama,*** (3) ***Rama Kanta Jain versus M.S. Jain,*** (4) and ***Thakur Kishan Singh versus Arvind Kumar.*** (5)

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- (1) (2001) 2 S.C.C. 498
 - (2) AIR 1964 Punjab 187
 - (3) 1993 C.C.C. 325 (Delhi)
 - (4) 1999 (3) C.C.C. 49 (Delhi)
 - (5) 1995 (1) C.C.C. 640 (S.C.)

(8) I have heard the arguments of the learned counsel for both the parties and have perused the record.

(9) Both the Courts below have recorded that property in question was lying vacant in the year 1947 as the tenants of Bhagat Ram, who were Muslims, fled to Pakistan. It has also been held that the suit property was consisting of some open land and three kacha rooms, which were existing thereon at that time. It has also been found that the plaintiffs—appellants took possession of the land in question including three kacha rooms in the year 1947. Families of Munshi Ram, Chanchal Dass and Chandika Ram had taken possession of three rooms and on the remaining open land, the other plaintiffs—appellants raised construction and started residing thereon. In due course of time, the plaintiffs—appellants raised more construction on the land in dispute. It appears that initially the plaintiffs—appellants were asked to take possession of the land in dispute by the Custodian department as the same was being treated as evacuee property. From the evidence on record, it is also clear that Bhagat Ram was the owner of this property, which was wrongly treated as evacuee property. Subsequently, he moved for release of his property. His request was ultimately allowed,—*vide* order dated 25th September, 1962 (Ex. D2) and the property in question was released by the Custodian department in pursuance of the order passed by the Assistant Custodian (General). It is the case of the defendant—respondent that in pursuance of the said order, he is taking recourse for getting back the possession of his property in due course of law and the Custodian department is taking steps to deliver possession of the property in question to him. But no evidence to this effect is available on the record. No other order except the order Ex.D2 has been placed on record. Nor it has been disclosed that any proceedings were and are pending or any order was passed by any authority for delivering possession. Present suit was filed on 7th September, 1988 when the defendant-respondent tried to get possession of the disputed property with the intervention of the police. It has been found by both the Courts below that the plaintiffs-appellants are in continuous possession of the property in dispute since 1947. Learned trial court found the said possession as hostile and adverse whereas the learned first appellate court has held that though the plaintiffs-appellants are in continuous possession of the property

in question since 1947 but their possession cannot be said to be adverse as they have denied the title of the true owner, namely Bhagat Ram, or his son (defendant) and have pleaded themselves to be owners of the property in question.

(10) In the aforesaid factual position, now the substantial question of law arises for determination is 'whether the possession of the plaintiffs-appellants on the suit property is continuous, hostile, adverse and open to the knowledge of the true owner'. In my opinion, learned first appellate court has wrongly reversed the judgment and decree passed by the trial court, while wrongly appreciating the aforesaid question of law involved in the present case. In this case, it cannot be said that Bhagat Ram was having no knowledge of the possession of the plaintiffs-appellants over the suit property. It is the case of the defendant-respondent himself that the property in question was wrongly treated as evacuee property by the custodian department and only on the application of Bhagat Ram the property was released by the Custodian department,—*vide* order dated 25th September, 1962 (Ex. D2). This fact clearly indicates that prior to the passing of the order of release, Bhagat Ram was aware that the plaintiffs—appellants were in possession of the property in dispute. Secondly, at least after passing of this order of release, Bhagat Ram was having the knowledge of adverse, hostile and open possession of the plaintiffs-appellants on the suit property. It has also been established on record that after taking possession in 1947, the plaintiffs-appellants raised construction on the suit land. Initially, there were only three kacha rooms and now, as per the said plan available on record, several pacca rooms have been constructed thereon. Therefore, it cannot be said at all that Bhagat Ram, and after his death the defendant-respondent were having no knowledge of the hostile and open possession of the plaintiffs-appellants over the suit property. Learned first appellate court has proceeded on the fact that in the plaint as well as in the replication, the plaintiffs-appellants have denied the title of the true owner, namely Bhagat Ram, therefore, they cannot claim adverse possession against the person whose title they have denied. In my opinion, the approach of the learned first appellate court in this regard is erroneous. It is well settled, as held by the Hon'ble Supreme Court in *Balkrishan versus Satyaprakash and others (supra)*, that a person claiming title by adverse possession has to prove three *nec-nec vi, nec claim and nec percario*. In other words, he must show that his possession

is adequate in continuity, in publicity and in extent. In *S.M. Karim* versus *Bibi Sakina*,⁽⁶⁾ the Hon'ble Supreme Court has also observed that adverse possession must be adequate, in continuity, in publicity and in extent and a plea is required at least to show when possession became hostile, so that the starting point of limitation against the party affected can be found. As discussed above, in the instant case, it has been clearly established on record that the plaintiffs-appellants are in continuous, hostile and open possession of the disputed property to the knowledge of the whole world, including the true owner Bhagat Ram. All the aforesaid three nec have been proved in the present case and, therefore, the plaintiffs-appellants have perfected their title by way of adverse possession. Learned first appellate court has wrongly proceeded on the assumption that since the plaintiffs-appellants have denied the title of Bhagat Ram on the suit property, therefore, they cannot claim any adverse possession. For the said observation, learned first appellate court has relied upon the Division Bench judgment of this Court in *Mt. Bhago's case* (*supra*), wherein it has been observed as under :

“Mere possession, however long, does not necessarily mean that it is adverse to the true owner. Adverse possession really means a hostile possession which is expressly or impliedly in denial of the title of the true owner, and in order to constitute adverse possession, the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of *being known by the parties interested in the property*, though it is not necessary that there should be evidence of the adverse possessor *actually informing the real owner of the former's hostile action.*” (Emphasis Added)

(11) I am of the opinion that the observation of the Division Bench of this court in the aforesaid case did not support the conclusion drawn by the learned first appellate court. Rather, it has been held

(6) AIR 1964 S.C. 1254

in the aforementioned case that the possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action.

(12) As discussed above, in the instant case, hostile possession of the plaintiffs—appellants was in the knowledge of the real owner, namely Bhagat Ram, and after his death in the knowledge of his son i.e. the defendant—respondent. Therefore, I am of the opinion that mere denial of the title of Bhagat Ram on the suit property by the plaintiffs—appellants does not disentitle them to claim adverse possession and the findings recorded by the first appellate court in this regard are not sustainable in the eyes of law.

(13) Learned counsel for the defendant-respondent, while referring to the rent receipt Ex.D3, submitted that the plaintiffs-appellants were inducted by the Custodian department as tenants and their possession was permissive, which never became hostile subsequently. In support of his contention, he relied upon the decision of Hon'ble Supreme Court in *Thakur Kishan Singh's case (supra)* wherein it has been held that mere long possession does not result in converting the permissive possession into adverse possession. If the possession was initially permissive, then heavy burden lies upon the person claiming adverse possession to establish that the same became adverse subsequently. He submitted that there is no evidence in the instant case as to when the possession of the plaintiffs-appellants, which was initially permissive, became adverse. I have considered this submission of learned counsel for the defendant-respondent and find no force in the same. Though from the receipt Ex.D3, it cannot be said that the disputed property was rented out to the plaintiffs-appellants by the Custodian department, but if for the sake of arguments it is taken that their possession was permissive as they were permitted by the Custodian department to occupy the property in dispute, then their permissive possession became hostile when the property in dispute was released by the Custodian department,—*vide* order dated 25th September, 1962 (Ex. D2). In my opinion that is the starting point of the adverse possession of the plaintiffs-appellants. After the said date, Bhagat Ram, the original owner, and after his death his son i.e. the defendant-respondent did not initiate any proceeding to take back

possession of the disputed property. There is no evidence available on the record except the oral statement that the defendant-respondent was taking legal step to take back the possession of the disputed property. The observation of the learned first appellate court in this regard to the effect that the defendant-respondent was taking proceedings before the Custodian department to regain the possession of the property in question and the competent authority has passed the order for delivery of possession to him and to halt that order, the plaintiffs-appellants have filed the present suit, is wholly without any basis and is perverse. In my opinion, the learned first appellate court has wrongly reversed the finding recorded by the learned trial court and has wrongly dismissed the suit of the plaintiffs-appellants.

(14) From the above discussion, it follows that the judgment and decree dated 9th May, 2001 passed by the learned first appellate court under challenge cannot be sustained, and is, accordingly, set aside. The judgment and decree dated 21st January, 1995 passed by the learned trial court is hereby restored. The appeal is, accordingly, allowed with no order as to costs.

R.N.R.

Before G.S. Singhvi & S.S. Grewal, JJ.

RUPINDER SAHOTA,— *Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 15093 of 2002

28th February, 2003

Constitution of India, 1950—Art.226—Notification dated 20th May, 2002 (as amended) issued by Punjab Government—Prospectus for Pre-Medical Entrance Test—2002—Respondents 5 & 6 appeared in Entrance test as General candidates & admitted against seats meant for reserved category—Challenge thereto—Different conditions of eligibility prescribed for admission to entrance test and regular admission—Provisions of Prospectus require candidates to submit fresh applications in prescribed form after passing the test—A candidate applying for admission to regular course under reserved category cannot be denied consideration for admission against such category