

**IN THE COURT OF GAURAV MAHAJAN, ADDITIONAL
DISTRICT JUDGE, NAHAN, DISTRICT SIRMAUR, H.P.**

C.N.R. No. : HPSI010016632024
CIS Case No. : 28/2024
CIS Case year : 2024
Civil Appeal No. : 28/13 of 2024
Case Type : Civil Appeal
Date of institution : 29.07.2019
Date of decision : **21.10.2024**

Narpat Singh, aged about 58 years, S/o Late Sh. Amar Singh, R/o village Dada, P.O. Mahipur, Tehsil Nahan, District Sirmaur, H.P.

....Appellant.

Versus

1. Bhaskar S/o Sh. Mata Ram, R/O Doda-Khelu, P.O. Mahipur, Tehsil Nahan, District Sirmaur, H.P.
2. Babu Ram S/o Sh. Krishan Dutt,
3. Shanti Devi D/o Sh. Krishan Dutt,
4. Sumitra Devi Wd/o Late Sh. Krishan Dutt,

All residents of village Doda-Khelu, P.O. Mahipur, Tehsil Nahan, District Sirmaur, H.P.

...Respondents.

**Civil Appeal Under Section 96 of CPC
against the judgment and decree dated
08.05.2019 passed by learned Senior Civil
Judge, Nahan, District Sirmaur (H.P.) in Civil
suit No. 16/1 of 2016, titled as “Bhaskar Dutt
Vs. Narpat Singh & Ors”.**

For the Appellant : Sh. N. S. Thakur, Advocate.

For the Respondents : Sh. A.K. Rewal, Advocate.

JUDGMENT

The appellant/defendant No. 1 has filed this appeal against the judgment and decree dated 08.05.2019 passed by learned Senior Civil Judge, Nahan, District Sirmaur (H.P.) in Civil suit No. 16/1 of 2016, titled as “*Bhaskar Dutt Vs. Narpat Singh &*

Ors”, whereby suit of the plaintiff for permanent prohibitory and mandatory injunction has been partly decreed. (The parties hereinafter are referred in the same manner in which they were arrayed before the learned trial Court for the sake of convenience).

2. Briefly stated, the facts of the case are that the plaintiff and proforma defendants are in exclusive possession of land bearing Khewat/Khatauni No. 22/26, comprising Khasra No. 206, measuring 02-09-00 bighas, situated at revenue estate, Dada Khelu, Patwar Circle Bechar Ka Bag, Tehsil Dadahu, District Sirmaur, H.P., as reflected in jamabandi for the year, 2010-2011 (here-in-after refer to as the 'suit land'). It has further been averred that the plaintiff has half share out of the suit land and the remaining half share is owned and possessed by proforma defendants.

3. Further averred that defendant being a quarrelsome and very influential person having muscle power and being financially very well off, is bent upon harassing the plaintiff and proforma defendants and without any right, title or interest in the suit land and is also a complete stranger, has cleverly presented a correction application before A.C., 2nd Grade, Dadahu, falsely claiming that he is in exclusive possession of the suit land, for the last more than hundred years and that the possession of the plaintiff and proforma defendants is being recorded wrongly and that may be entered in the name of defendant. Alleged that the proceedings have been filed to defeat the rights of the plaintiff and proforma defendants.

4. Further averred that defendant was neither in possession of the suit land nor any part thereof is presently in his occupation. Alleged that after presenting the aforesaid application for correction of revenue entries, the defendant has hurled threats to take forcible possession of the suit land on the strength of aforesaid application, in the last week of February, 2016 and

thereafter, in the first week of March, 2016, he diverted waste water of his house, which is built abutting the suit land, into the fields of the plaintiff and proforma defendants illegally and unauthorizedly without the consent or knowledge and permission of the plaintiff and proforma defendants. Further alleged that when the plaintiff protested against such diversion of the dirty water by the defendant into the fields of the plaintiff and proforma defendants, the defendant threatened to take forcible possession of the entire suit land and declared that he was not afraid of the plaintiff and proforma defendants and he would continue doing similar acts in the field of the plaintiff and proforma defendants for asserting his possession and would compel the plaintiff and proforma defendants to vacate the same. Further averred that other co-sharers have not been joined by the plaintiff at the time of institution of this suit, therefore, they have been impleaded as proforma defendants for their benefit. A prayer has been made for a decree of perpetual prohibitory injunction restraining the defendant either by himself or through his agents, servants, relations or assignees from interfering or trespassing in any manner whatsoever in the suit land. A decree of mandatory injunction has also been sought against the defendant restraining him from releasing dirty domestic water in the suit land.

5. The suit has been contested by the defendant No. 1 by filing written statement, wherein preliminary objections have been raised inter alia qua maintainability of the suit; cause of action; plaintiff not being in possession of entire suit land and suit of the plaintiff being the counter blast to the suit earlier filed by the defendant. On merits, it has been averred that land measuring 1 bigha few biswas is in possession of defendant No. 1 since the time of his predecessor-in-interest within the due knowledge of the plaintiff and proforma defendants as well as their predecessors and public at large and in this regard, the defendant No. 1 had moved an application for correction of revenue entry

before the competent authority of Revenue Department of the total suit land and the Field Kanungo found the defendant in possession of one biswa and few biswas land on the spot, which facts are very much within the knowledge of the plaintiff and proforma defendants. Further averred that the correction application was referred before competent Revenue Court but the same has been withdrawn by the plaintiff. Further averred that the plaintiff and proforma defendants are very quarrelsome in nature and falsely dragged the poor defendant in false litigation and on the other hand suit for the possession does not lie without impleading all the parties and the same is also not properly valued for the purpose of Court fees and jurisdiction.

6. Further averred that that defendant No. 1 since the time of his predecessor-in-interest is in hostile, continuous, uninterrupted, open, due knowledge of the public at large possession over the suit land. Further averred that suit land is being used by defendant No. 1 for his kitchen garden from the time of his predecessor-in-interest. It had been prayed that suit be dismissed in the interest of justice.

7. The proforma defendants, after due service, failed to put in appearance before the learned trial Court, hence, they were proceeded against ex parte.

8. No replication was filed. From the pleadings of the parties, the following issues were framed by the learned trial Court on 08.06.2016:-

1. Whether the plaintiff is entitled for perpetual prohibitory injunction, as prayed for?...OPP
2. Whether the plaintiff is also entitled for a decree of mandatory injunction, as prayed for?...OPP
3. Whether suit is not maintainable, as alleged?
...OPD
4. Whether the plaintiff has no enforceable

cause of action to file the present suit, as alleged?...OPD

5. Whether the plaintiff has not come to the Court with clean hands and has suppressed the material facts, as alleged?...OPD

6. Relief.

9. To substantiate his claim the plaintiff examined himself as lone witnesses and also placed on record copies of jamabandis for the year, 2010-11 Ext. PW-1/B), for the year, 1970-71 Ext. PW-1/C, for the year, 1970-71 Ext. PW1/D, for the year, 1976-77 Ext. PW1/E and for the year, 1981-82 Ext. PW-1/F and closed his evidence.

10. Per contra, the defendant No. 1 also examined himself as lone witness and filed on record application for correction of revenue entries Ext. D-1 and statement of Bhaskar Dutt Ext. D-2 closed his evidence.

11. The learned trial court vide judgment and decree dated 08.05.2019 decided issue No. 1 in affirmative and issues No. 2 to 5 in negative and partly decreed the suit of the plaintiff.

12. Feeling aggrieved and dissatisfied by the judgment and decree, the appellant has preferred this appeal on the grounds that the learned trial Court has not appreciated the oral and documentary evidence on record and the fact that the plaintiff has specifically pleaded that 01 bigha of land is in possession of appellant/defendant No. 1 and qua the same appellant/defendant No. 1 had filed a correction application before the revenue authorities. It has further been averred that the judgment and decree of the learned trial Court are not sustainable and are liable to be set aside. It has been prayed that appeal be allowed and the judgment and decree of the learned trial Court be set aside.

13. I have heard learned counsel for the parties and have

given considerable thoughts to rival submissions at bar and have perused the case file carefully.

14. Following points arise for determination in this appeal:-

1. Whether the judgment and decree of learned trial court suffer from legal infirmity and are not sustainable in the eyes of law ?

2. Relief.

15. For the reasons to be recorded hereinafter, while discussing the aforesaid points for determination, my findings on these points are as under:-

Point No.1 : No.

Relief : Appeal is dismissed as per operative part of the judgment.

REASONS FOR FINDINGS

POINT NO.1

16. The perusal of copy of jamabandi Ext. PW-1/B annexed on record suggests that plaintiff Bhaskar Dutt is shown to be one of the co-owners in possession of the suit land. The perusal of the written statement filed by the defendant reveals that he has claimed adverse possession over 01 bigha and few biswas of the suit land. In para No. 2 of the written statement, the defendant No. 1 has admitted that he had filed an application for correction of the revenue entries before the revenue authority.

17. Copy of correction application Ext. D1 has been placed on record, in which the defendant No. 1 Sh. Narpat Singh had alleged his possession over the entire khasra No. 206, measuring 2-09-00 bighas. The perusal of this application reveals that in addition to the plaintiff, the proforma defendants have also been impleaded as parties by defendant No. 1 before the revenue authorities. In the present case, the suit has been instituted by the plaintiff who is one of the co-owners for the benefit of other co-owners who have been arrayed as proforma defendants.

18. In lieu of the said application, demarcation of the land had been got conducted by the Field Kanungo and as per demarcation report Mark-X, over khasra No. 206/1 measuring 1-0 bighas *Nakabiltoda*, possession of the defendant No. 1 was found and on khasra No. 206/2 measuring 1-9 bighas *Nakabiltoda*, possession of Sh. Bhaskar Dutt S/o Sh. Mata Ram was allegedly found.

19. PW-1 Sh. Bhaskar Dutt has stepped into the witness-box as PW-1 and has reiterated his pleadings. In cross-examination, he has admitted that defendant had filed an application for correction of revenue entries and the revenue official had visited the spot and conducted demarcation on 24.09.2015 and copy of the same is Ext. D-1. He has denied that khasra No. 206/1 was found in possession of the defendant No. 1.

20. DW-1 Sh. Narpat Singh has stepped into the witness-box as DW-1 and has reiterated his pleadings, but in cross-examination, he has admitted that suit land is Malkiti land of the plaintiff and has voluntarily stated that 01 bigha of the land is in his possession.

21. As per copy of jamabandi for the year, 2010-11 Ext. PW-1/B, the suit land is shown to be in the ownership of plaintiff and proforma defendants and the same is shown in their cultivatory possession also. Likewise, in copy of jamabandi for the year, 1970-71 Ext. PW-1/C, the suit land when it was shamlat land, had been shown in the ownership and possession of the owners whereas, as per copy of jamabandi for the year, 1980-81 Ext. PW-1/D, the suit land was shown to be in possession of father of the plaintiff Sh. Mata Ram in self cultivatory possession. Likewise, as per jamabandi for the year, 1976-77 Ext. PW-1/E, the suit land is shown to be in the cultivatory possession of father of the plaintiff Sh. Mata Ram. As per jamabandi for the year, 1981-82 Ext. PW-1/F, the suit land is shown to be in the cultivatory possession of plaintiff and another.

22. The plaintiff had approached the learned trial Court on the basis of title being co-owner of the suit land and it was for the defendant to prove his adverse possession over the suit land i.e. specific date as to when possession started and when it matured. It is the established proposition of law that, when a person claims adverse possession over the suit properties like in this suit at hand, he has no equities in his favour, as he is trying to defeat the rights of the true owner. Therefore, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

23. In 2006 (I) Apex Court Judgments 91 (SC) & 2006 (I) Civil Court Cases 198 (SC) : **Saroop Singh Vs. Banto & Others**, it has been held that a person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

24. It is also the settled proposition of law that, when a person claims title over the suit properties through adverse possession on the basis of his long and continuous possession since the time of his father, in that case, in order to establish his title through adverse possession, he shall specifically plead and prove, the date, from which his possession became adverse to the defendants as well as the date on which his adverse possession ripened to title.

25. In 2017 (II) CLR (SC) 1097: **Dharampal (dead) Thr. LRs. Vs. Punjab Wakf Board & Others** & 2009 (I) Civ.L.T (Uttarakhand) 120: **Kalawati (Since deceased) through LRs Vs. Girishh Shram (Since deceased) through LRS & Another** it has been held that " *In claim of title by the defendant through adverse possession, there was averment in the Written Statement by the defendant that, he (defendant) was in possession through his father over the suit properties since 1953 but the date, from which, his possession has become adverse not pleaded, the date*

of ripening of adverse possession was also not pleaded, there was no question of perfecting title over the suit land through adverse possession by the defendant."

26. In case of 2023 (4) Civil Court Cases 634 (Himachal Pradesh): **Om Prakash & Another Vs. Bishan Dass** (Para Nos.14 & 15) it has been held that in claim of title through adverse possession by the defendants, when, material on record does not suggest that, the defendants ever expressed their specific hostile animus to hold possession of the suit land as owners by denying the title of the plaintiff or his predecessor-in- interest, Defendant had not perfected their title over the suit land by way of adverse possession.

27. In case of failure to prove adverse possession, any other form of possession howsoever, long, cannot be held sufficient to non-suit plaintiff in his prayer for possession of the suit land on the basis of title.

28. Thus, adverting to the question of adverse possession, it is well recognized proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in of 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. It is equally settled that a person pleading adverse possession has no equities in his favour and since such a person is trying to defeat the rights of the true owner, it is for him to clearly plead and establish necessary facts to establish his adverse possession. In the eyes of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Even non-use of the property by the

owner for a long time won't affect his title.

29. In this background, the defendant has failed to prove his adverse possession over the suit land and longstanding revenue entries show the plaintiff and proforma defendants and their predecessor-in-interest in possession of the suit land and the learned trial Court has rightly held that the plaintiff has right to remain in possession over the suit land.

30. So far as the case of the defendant that he had moved an application before A.C. 2nd Grade, Dadahu for correction of revenue entry, even if, it is believed that entries have been made as Kabij in the revenue record by the revenue field agency, even then such entries of Kabij carry no legal substance in view of instruction of Government of H.P. and the provisions of H.P. Land Revenue Act.

31. The Hon'ble High Court of Himachal Pradesh in case of **Shanker Singh Verma & Ors. Versus State of H.P. & Anr.** , CWP No.6978 of 2024, Date of decision: 19.07.2024 has held that an entry in the revenue record does not confer title on a person, whose name appears in the record-of- rights. Such entries have only fiscal purpose, i.e. payment of land revenue and no ownership is conferred on the basis of such entries. Title to the property can only be decided by a Competent Civil Court. The relevant para is as follows:-

4(iv). In Suraj Bhan & Ors. vs. Financial Commissioner & Ors.(2007) 6 SCC 186, there was dispute concerning validity and genuineness of the Will and also about a mutation attested on the basis of disputed Will. Hon'ble Apex Court held that validity and genuineness of the Will can only be decided by a Competent Civil Court. By entering name of the respondent (therein) in the record-of-rights on the basis of disputed Will, no illegality was committed by the Tehsildar. An entry in the revenue record does not confer title on a person, whose name appears in the record-of-rights. Such entries have only fiscal purpose, i.e. payment of land revenue and no ownership is

conferred on the basis of such entries. Title to the property can only be decided by a Competent Civil Court.

32. As far as the claim of the throwing dirty water over the suit land is concerned, keeping in view the fact that the land of the plaintiff is at high elevation and the land of the defendant is at lower elevation, the learned trial Court has rightly held that the plaintiff has not succeeded in proving the same.

33. Thus, the learned trial court has rightly appreciated the oral and documentary evidence on record and the judgment and decree of the learned trial Court require no interference and this point is decided in favour of the plaintiff/respondent and against the defendant/appellant.

RELIEF

34. In view of my findings returned on point No.1, the present appeal merits dismissal and is accordingly dismissed with costs and the judgment and decree passed by the learned trial Court are upheld and affirmed. Decree sheet be prepared accordingly.

35. The file of the learned trial Court alongwith a copy of this judgment be sent back and the file of this court, after due completion, be consigned to the Record Room.

Announced in the open Court today the **21st day of October, 2024.**

Sd/-

(**Gaurav Mahajan**)
Additional District Judge,
Nahan, District Sirmaur, H.P.

sanjeev