

Chandigarh allowed the second appeal of the plaintiff-respondent, set aside the judgment and decree of the First Appellate Court, and restored the judgment and decree of the Trial Court decreeing the suit for possession.

4. The dispute relates to land admeasuring 2176.6 sq. yards located in Khewat No.702/1146/Khasra No.116/26/2/15 situated at Samana, Tehsil-Samana, District-Patiala (hereinafter referred to as the “land in suit”). According to the appellant, the land in suit belonged to one Shri Inder Singh, predecessor in interest of the respondents. Shri Inder Singh had donated the land in suit to the appellants for the construction of a Veterinary Hospital in 1958 and had also handed over the possession of the same. The appellant-State constructed a veterinary hospital over the land in suit in 1958-1959. The Veterinary Hospital has been existing and is functional over the land in suit ever since. During his lifetime, Shri Inder Singh

never objected or filed any suit alleging trespass or unauthorized occupation by the State. However, after the death of Shri Inder Singh, his son Shri Bhagwantpal Singh (since deceased) filed a suit for possession of the land in suit in the year 2001, that is after almost 43 years of it being donated to the State. The suit was registered as Civil Suit No.98 of 2001 before the Additional Civil Judge (Sr. Division), Samana.

5. The appellant filed written statement denying the plaint allegations and also raising plea regarding the suit being barred by limitation and also urged that since no relief for declaration had been sought and the suit was only for relief for possession, it was not maintainable. It was specifically averred in the written statement that the land in suit had been donated by Shri Inder Singh for the purpose of establishing a Veterinary Hospital in the year 1958, and possession was also delivered. The State thereafter, from the

funds of the State Government, constructed a Veterinary Hospital soon thereafter in the year 1958-59, and since then, the same has been functional.

6. On the basis of the pleadings, the Trial Court framed the following issues: -

“1. Whether the plaintiff is owner of the suit land? OPP

2. If issue No.1 is proved, whether the plaintiff is entitled to the decree for possession of the suit land? OPP

3. Whether the suit as framed is not maintainable? OPD

4. Whether the suit is within time ? OPP

5. Relief.”

7. The parties led evidence based on which the Trial Court decreed the suit vide order dated 20.05.2003.

The findings recorded by the Trial Court are as follows:

(i) As the defendant had raised the plea of adverse possession, therefore, they admitted the ownership of the plaintiffs;

(ii) There being no document regarding the alleged gift, the same does not stand proved;

(iii) The mere resolutions of the Municipal Council are not sufficient to prove that the land had been donated by the father of the plaintiff.

8. The Appellant-State preferred an appeal which was registered as C.A. No.44 of 2003. The Additional District Judge allowed the appeal of the appellant-State setting aside the judgment of the Trial Court and dismissed the suit. The findings recorded by the Appellate Court are as follows:

(i) The fact that the Veterinary Hospital had been established in 1958-59 and it was being run ever since then, the filing of the suit after more than four decades was barred by time.

(ii) The owner of the property having allowed the State to take possession, construct the Veterinary Hospital, and run the same over the land in suit since 1958-59 itself proves that the land had been

actually donated by Shri Inder Singh, father of the original plaintiff.

(iii) Shri Inder Singh, during his lifetime, having never agitated about the construction of the hospital or the existence of the hospital building over the land in suit, also reflects that he had, in fact, donated the land in suit.

(iv) The plaintiff, having admitted that, he had been witnessing the Veterinary Hospital being run over the land in suit since 1981 but did not take any steps thereafter also proves that, in fact, ownership had been transferred to the State in 1958 itself.

9. Aggrieved by the same, the plaintiff-respondent preferred a second appeal before the High Court registered as RSA No.447 of 2004. By the impugned order, the High Court has allowed the appeal, set aside the judgment of the First Appellate Court, and restored that of the Trial Court. The findings recorded

by the High Court are as follows:

- (i) The Appellant-State failed to establish possession over the land in suit.
- (ii) The basic ingredients for claiming adverse possession were neither pleaded nor any evidence led in that regard.
- (iii) The pleadings in the written statement filed by the appellant-State did not mention the details regarding the date of possession, date of knowledge to the whole world, duration of possession, and much less *Animus Possidendi*.

10. It is this judgment of the High Court which is under challenge in the present appeal.

11. Sri Sanjay R. Hegde, learned Senior Counsel appearing for the appellant made the following submissions:-

- (i) The suit for possession filed by the respondents, was clearly barred by time in view of Article 65 of the Limitation Act, 1963, which provides the

limitation for a suit for possession of an immovable property based on title to be 12 years. In the present case, the possession of the appellants was since 1958, even the admitted position by the respondents to their knowledge was from 1981. As such, the suit filed in the year 2001 was hopelessly barred by time from both the dates i.e. 1958 as also 1981.

(ii) The burden to prove ownership would lie on the person challenging the ownership of the person in possession in view of Section 110 of the Indian Evidence Act, 1872. In the present case, the respondents admitted the possession of the appellants and were only challenging the ownership of the appellants. As such, the burden was cast upon the respondents to prove their ownership.

(iii) The appellants had claimed to be in possession of the land in suit since 1958 and had also asserted

that it had constructed a Veterinary Hospital soon thereafter, for which it had also filed documentary evidence. Sri Inder Singh, the predecessor in interest of the plaintiff-respondent, who had donated the land in suit for construction of Veterinary Hospital, never challenged the same nor ever objected to the constructions being raised over it. He was the owner in possession of the suit land. The appellants, being in clear and continuous possession of the suit land since 1958, had perfected its rights as owners.

(iv) In support of his submission, Sri Hegde, relied upon the following judgments:-

- (1) Chuharmal Vs. CIT¹;**
- (2) Ramchandra Sakharam Mahajan Vs. Damodar Trimbak Tanksale (D)²;**
- (3) Anathula Sudhakar Vs. P. Buchi**

¹ (1988) 3 SCC 588

² (2007) 6 SCC 737

- Reddy³;**
- (4) T.V. Ramakrishna Reddy Vs. M. Mallappa⁴;**
- (5) Guru Amarjit Singh Vs. Rattan Chand⁵;**
- (6) Sawarni Vs. Inder Kaur⁶;**
- (7) Jattu Ram Vs. Hakam Singh⁷;**

12. Mr. Hegde, thus, submitted that the impugned judgment of the High Court deserves to be set-aside.

13. Mr. Sidharth Luthra, learned Senior Counsel appearing for the respondents made the following submissions:-

(i) The impugned judgment of the High Court did not suffer from any perversity, as such, did not warrant any interference by this Court.

(ii) The plea of adverse possession was neither pleaded nor proved, as such the High Court rightly set

³ (2008) 4 SCC 594

⁴ (2021) 13 SCC 135

⁵ (1993) 4 SCC 349

⁶ (1996) 6 SCC 223

⁷ (1993) 4 SCC 403

aside the judgment of the First Appellate Court which was based on the plea of adverse possession.

(iii) The State Government cannot claim adverse possession for which reliance was placed upon the following judgments:-

- (1) State of Kerala Vs. Joseph⁸;**
- (2) State of Haryana Vs. Mukesh Kumar and Ors.⁹;**
- (3) Karnataka Board of Wakf Vs. Government of India¹⁰;**

(iv) No written deed of gift, much less registered, was placed on record by the appellants to support its claim of donation/gift by Sri Inder Singh.

(v) The suit is not barred by limitation, in as much as, the respondents came to know of the construction only in September, 2000 and, thereafter, they immediately gave legal notice and filed the suit for possession.

⁸ (2023) SCC Online SC 961

⁹ (2011) 10 SCC 404

¹⁰ (2004) 10 SCC 779

(vi) The revenue records (*Jama bandis*) established the ownership rights of the respondents. The submission to the contrary by the appellants is contrary to law. The revenue records carried presumption of correctness unless rebutted. In the present case, the appellants failed to rebut the said presumption. He relied upon the following judgments in support of the said submission: -

(1) Partap Singh Vs. Shiv Ram¹¹;

(2) Vishwa Vijai Bharti Vs. Fakhrul Hasan and Ors¹²;

(vii). Lastly, it was submitted by Sri Luthra that the appeal was filed with a delay of 492 days without any satisfactory explanation. As such, the appeal was liable to be dismissed on the ground of delay itself. In support of the said submission, he relied upon the following two judgments:-

(1) State of Madhya Pradesh Vs.

¹¹ (2020) 11 SCC 242

¹² AIR 1976 SC 1485

Bherulal¹³;

**(2) Office of the Chief Post Master
General and Others Vs. Living Media India
Ltd. & Anr.¹⁴;**

14. Having considered the submissions and having perused the material available on record, our analysis runs as under.

15. A copy of the plaint filed by the respondents is filed as **Annexure (P-18)**. It is as vague as possible and is very brief running into ten paragraphs. Its contents are briefly referred to hereunder:-

(a) The plaint schedule property is described in the beginning of the plaint. Paragraph-1 states that plaintiff is owner of the land in dispute, for which, Jama Bandi of the year 1996-97 is filed. Paragraph-2 states that defendants without consent of plaintiff have constructed a veterinary

¹³ (2020) 10 SCC 654

¹⁴ (2012) 3 SCC 563

hospital illegally and unauthorizedly over the suit land. Paragraph-3 states that the defendants neither purchased the said land from the plaintiff nor paid any compensation to the plaintiff, as such, their possession is unauthorized and illegal. The plaintiff being its owner is entitled to vacant possession. Paragraph 4 states that despite repeated request to hand over vacant possession by removing the debris (*malba*), no heed has been paid to the said request. Paragraph-5 mentions that a registered notice dated 09.11.2000 was served upon the defendants calling upon them to hand over possession, but no reply was received in response to the same. Copy of the notice and acknowledgement of receipt were attached with the plaint. Paragraph-6 states that cause of action arose on 1st March, 2001 as the defendants did not give any reply to the notice. Paragraph-7 states that suit property was situated within the

jurisdiction of the Court. Paragraph-8 mentions regarding the valuation and the court fee paid. Paragraph-9 mentions that there was no prior litigation pending between the parties regarding the subject matter. Paragraph-10 is the relief clause wherein it was prayed that suit of plaintiff for possession of the suit property be decreed.

16. The plaint, to our opinion ought to have been rejected on the ground of being vague and not carrying necessary and material particulars. The plaintiff very conveniently avoided stating in the plaint as to when the defendants constructed the Veterinary Hospital; they also did not mention any details of the period when request was said to have been made for delivering vacant possession; the first date and document mentioned in the plaint is of the legal notice dated 09.11.2000.

17. In the case of **Ram Singh Vs. Gram Panchayat Mehal**

Kalan¹⁵, this Court observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.

18. Herein, it is evident that the plaintiff purposely drafted/filed a vague plaint which lacked the essential details of when the hospital was constructed, when the plaintiff became aware of such construction, when the right of ownership devolved upon the plaintiff, when his father passed away, his letter of 24.04.1981 to the Tehsildar etc. It is nothing but a clear attempt by Respondent at surpassing the bar under limitation law for filing the suit since the existence of the hospital was a fact well known to him since long ago.

19. The appellants filed their written statement denying

¹⁵ (1986) 4 SCC 364
SLP (CIVIL) D. NO. 17885 OF 2020

the plaint allegations; three preliminary objections were also raised to the effect that suit was not maintainable in its form; the appellants were in continuous possession over the suit land and; the suit was time barred. It was further specifically stated that the land in suit was donated by Sri Inder Singh in 1958 for construction of Government Veterinary Hospital and, further, Municipal Council, Samana and the State of Punjab had made financial contribution for construction of the building of the hospital in the year 1959 and since then, the hospital is functioning, which is well known to the public of Samana as also to the plaintiff. In support of the fact that the hospital was constructed and that the possession was with the State-appellant, various resolutions of 1958-59, other revenue records were filed. It was also specifically stated that as the land had been donated, there was no question of payment of consideration or compensation to the plaintiff.

20. A replication was filed by the plaintiff-respondent.

21. Plaintiff examined himself as P.W.-1 and filed documentary evidence which were exhibited. On the other hand, the State examined Dr. Rajendra Kumar Goyal as D.W-1 and Jagdish Chand as D.W.-2 and had also filed several documents relating to resolutions passed by the Municipal Council in the year 1958-59, also the correspondence between the Veterinary Officer and the Executive Officer of the Municipal Council sometimes in 1981, as also the documents to show that the plaintiff was aware of the existence of the Veterinary Hospital in the year 1981 as he had made an enquiry from the concerned Tehsildar regarding the exact location of the Veterinary Hospital.

22. A perusal of all such documents (Ex's- DW2/C, DW2/B, D-2, D-3, D-4 and D-5) filed by the

defendant-State clearly establishes that the land had been donated by Sri Inder Singh, father of the plaintiff in the year 1958-1959 and, thereafter, after arranging for funds from various sources, the hospital had been constructed in 1959 and has, ever since then, been functional. The above documents are resolutions of the Municipal Council of 1958-59 and also Utilization Certificates of funds utilized for construction of the hospital. The document (Ex.DW2/A) also goes to prove that there was a communication from the Executive Officer of the Municipal Council dated 01.07.1981 giving details of the allotment, the construction, the finances and also the functionality of the hospital. This communication further mentions that somebody had destroyed the file of the gift and the construction of the hospital for which an enquiry was pending. Nevertheless, the facts stated therein clearly reflect that there was a hospital in existence much before 1981. Another document filed by the

defendant-appellant was Ext.-D (8), which is a letter written by the plaintiff dated 24.04.1981 requiring the Tehsildar, Samana to verify and give a report regarding location of the Veterinary Hospital. The said letter also bears endorsement of the Tehsildar and other Revenue Officials and also contains the signature of the plaintiff. This letter clearly shows that the plaintiff was aware of the existence of the Veterinary Hospital in 1981. Thus, he had made a false and incorrect statement in his deposition that the hospital was constructed only two years ago. Another fact worth mentioning here would be that, during cross examination, the plaintiff stated that he did not remember as to whether the hospital was in existence since 1958-59 or not.

23. Considering this letter dated 24.04.1981, even if we assume that the Respondent became aware of the hospital's existence on this date for the very first time,

yet the suit filed by him shall not fall within the limitation period. Article 65 of the Limitation Act clearly stipulates that in a suit for possession of immovable property, the period of limitation will be twelve years from when the possession of the defendant becomes adverse to the plaintiff. In the facts and circumstances of the case, the Respondent-plaintiff's suit is clearly barred by limitation.

24. The argument that State could not claim adverse possession is not germane to the present case. Fact remains and has been duly established from the record that the hospital had been constructed on the land belonging to the predecessor in interest of the plaintiff sometime in the year 1958-59. At that time, Sri Inder Singh, father of the plaintiff who was the owner of the said land was alive and he did not object to it, which clearly indicates that he had donated the land for construction of Veterinary Hospital in Tehsil,

Samana. In those good old times, it used to be a usual practice of big landlords donating their lands for public cause. It is unfortunate that after 43 years, his son filed the suit for possession without seeking declaration, as in case, he would have sought relief of declaration, the suit would have been further barred by time for the said relief also. The defendant having been in possession without any hindrance since 1958, the suit filed would only be a mockery of justice if decreed. If the plaintiff's case was that it was never donated but still the hospital had been constructed, then the plaintiff should have instituted a suit for possession within 12 years. Having not done so, the suit was clearly barred by time for the relief of possession.

25. As already discussed above, various documents were filed and proved by the defendant-appellant regarding the donation, the transfer of possession, the

construction of the Veterinary Hospital and its functionality since more than 40 years before the suit was filed. In fact, the evidence establishes that the donation was documented, and possession transferred and acted upon and for the very purpose, for which the donation was made.

26. The title of the land in suit had passed on to the State after the donation and transfer of possession and after construction, the hospital continued for more than four decades before filing of the suit. The plaintiff, son of the donor, also waited for 20 years despite admitted knowledge of the hospital running over the land in suit and did not take any action.

27. Article 65 under the Schedule to the Limitation Act provides limitation of 12 years for filing a suit for possession based on title. In the present case, merely because the name of the plaintiff continued in the revenue records (*Jama Bandis*), it would not confer

any title upon him. Revenue records (*Jama Bandis*) are only entries for the purpose of realising tax by the Municipal Corporations or land revenue by Gram Sabhas. The plaintiff having failed to claim relief of declaration, the suit itself would not be maintainable. Further, for a suit for declaration, period of limitation would be three years under Article 58 of the Schedule to the Limitation Act, which in the present case was long lost.

28. There is nothing on record available from the cross-examination of defendants 1 and 2 that the documents which they proved were either incorrect, doubtful or suspicious. The documents exhibited by the defendants could not be ignored as they were public documents, copies of which were filed and duly proved. Even if the deed was not placed on record but due explanation was given, the facts of the case and the evidence on record clearly established the case of

the defendant-appellant that the land in suit had been donated by Sri Inder Singh, father of the plaintiff way back in 1958. The lethargy/carelessness on the part of the State in not getting the revenue records corrected on the basis of the gift deed would not take away the rights conferred on the State under the gift deed.

29. The case-laws relied upon by Sri Luthra on the question of State not being entitled to claim adverse possession as also the presumption of revenue records being correct, have no application and are of no help to the respondents in the light of the discussion made above.

30. It is settled law that in a suit for possession, the burden of proof lies on the plaintiff. As per Section 110 of the Evidence Act, 1872, the burden of proof as to ownership of a property lies on the person challenging the ownership of the person in possession. Section

110 of Evidence Act is produced as follows:

“110.Burden of proof as to ownership- When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.”

31. This Court had summarized the provision in

Chuharmal v. CIT (supra) as follows:

“6. ...Section 110 of the Evidence Act is material in this respect and the High Court relied on the same which stipulates that when the question is whether any person is owner of anything of which he is shown to be in possession, the onus of proving that he is not the owner, is on the person who affirms that he is not the owner. In other words, it follows from well settled principle of law that normally, unless contrary is established, title always follows possession.”

32. In view of the clear finding that the hospital is functioning on the suit land since 1958, the Trial Court as well as the High Court have wrongly shifted the proof of ownership on the Appellant, whereas it lay on the Respondent by virtue of Section 110 of the

Evidence Act.

33. In view of the above discussion, the appeal deserves to be allowed and is, accordingly, allowed.

34. The impugned judgment of the High Court is set aside and that of the First Appellate Court dismissing the suit of the plaintiff-respondent is confirmed.

.....**J.**
(VIKRAM NATH)

.....**J.**
(K.V. VISWANATHAN)

NEW DELHI
JULY 10, 2024