

2025:PHHC:022358



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-2329-1992 (O&M)
Date of decision :17.02.2025

NIKU RAM

...Appellant

Versus

MAN SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Manuj Chadha, Advocate
for the appellant.

Mr. Jyoti Parshad Sharma, Advocate
for the respondents.

HARSH BUNGER, J.

For convenience, parties herein are being addressed as per their status in the original suit.

2. The present Regular Second Appeal has been filed seeking setting aside of judgment and decree dated 08.09.1992 passed by the learned Additional District Judge, Hissar; whereby the judgment and decree dated 19.11.1986 passed by the learned Sub Judge Ist Class, Hansi has been set aside and the suit filed by the plaintiffs has been dismissed.

3. Briefly, plaintiff-Niku Ram filed a suit for declaration that he is owner in possession of the house (as detailed in the plaint) and that the defendants have no concern with the same. A further prayer was made that defendants be restrained from interfering in the possession of the said house.

3.1 It is the pleaded case of the plaintiff that he had purchased land measuring *300 sq. yards* vide registered sale deed dated 30.12.1948 from one Munshi son of Fatha and out of the said land, the plaintiff constructed his house on *100 sq. yards* and remaining *200 sq. yards* was exchanged by him with his brother-Sher Singh (father of defendants No.1 and 2) with *186 sq. yards* area and physical possession thereof was also changed. Plaintiffs claim that Sher Singh further gave *100 sq. yards* to their another brother-Padma (father of defendants No.3 and 4) and their houses are constructed thereon.

3.2 Plaintiffs' claim is that on *186 sq. yards* area, which he had got in exchange from Sher Singh; he is keeping his donkeys, sheep and wood. Plaintiffs also claim adverse possession of the said area measuring *186 sq. yards* area.

4. On the other hand, the defendants contested the suit by raising various preliminary objections including the objection that they have already filed a Civil Suit No.82 against plaintiff-Niku Ram and his sons and that the present suit was not maintainable. Further, on merits, it was claimed by the defendants that *300 sq. yards* land was jointly purchased by Sher Singh, Padma and Niku Ram, who were the real brothers and each of the brother had paid his share of the consideration amount but as Niku Ram was the eldest brother, he wrongly got the sale deed executed only in his name. It was specifically stated that the house of Sher Singh bearing No.193/235 was in possession of defendant No.1 and that the house of Padma bearing No.194/237 was in possession of defendants No.3 and 4. The factum of exchange of *186 sq. yards* area by Sher Singh with *200 sq. yards* of plaintiff-Niku Ram was denied. It was stated that *186 sq. yards* was separately purchased by Sher Singh and the plaintiff has no right, title

or interest in the said area. Accordingly, prayer for dismissal of the suit was made.

5. From the pleadings of the parties, the following issues were framed :-

“1. Whether the plaintiff was owner in possession of 300 sq. yards land, vide registered sale deed dated 30.12.1948? OPP

2. Whether plaintiff had constructed the house on 100 sq. yards out of 300 sq. yards, and is owner in possession of the house in dispute and made exchange of the remaining land with Sher Singh father of defendants No.1 and 2 as alleged in para No.3 of the plaint? OPP

3. Whether the defendants want to take forcibly possession of the house in dispute? OPP

4. Whether the plaintiff has no locus-standi to file the present suit? OPD

5. Whether the plaintiff has cause of action to file the present suit? OPD

6. Whether the suit is bad for mis-joinder of causes of action? OPD

7. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD

8. Whether the suit is liable to be stayed under Section 10 CPC as alleged in para No.5 of the preliminary objection? OPD

9. Whether the suit is time barred? OPD

10. Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPD

11. Whether the suit is not maintainable in the present form? OPD

12. Whether the plaintiff is stopped from filing the present suit by his own act and conduct? OPD

13. *Whether the site plan annexed with the plaint is not according to side as alleged in para no.10 of preliminary objections? OPD*

14. *Whether plaintiff has not come to the court with his clean hands? OPD*

15. *Whether the defendants have become owner of the disputed property by way of adverse possession? OPD*

16. *Relief.”*

6. The parties led their respective evidence in support of their claims and the learned trial Court, vide judgment and decree dated 19.11.1986 decreed the suit filed by the plaintiffs.

7. Feeling aggrieved against the afore-said judgment and decree dated 19.11.1986, the defendants preferred an appeal before the learned Additional District Judge, Hisar, which came to be allowed vide judgment and decree dated 08.09.1992; whereby, the trial Court's judgment dated 19.11.1986 was set aside and the suit filed by the plaintiffs was dismissed.

8. In the afore-mentioned facts and circumstances, the present regular second appeal has been filed before this Court.

9. Heard.

10. In the present case, the dispute primarily circles around *186 sq. yards* area, which was admittedly purchased by Sher Singh (father of defendants No.1 and 2). Plaintiff claimed the afore-said area on the basis of an oral exchange with his 200 sq. yards area. The trial Court while deciding Issues no.1 and 2 held that the defendants had got the suit land in oral exchange from the plaintiff and that he is in possession thereof as such. A further finding has been returned by the trial Court that the plaintiff being in possession for more than 12 years at the time of filing of the suit, has become its owner by adverse possession as well. Accordingly, the learned trial Court decree the suit filed by plaintiff-Niku Ram.

11. However, on appeal, the first Appellate Court, vide the impugned judgment and decree dated 08.09.1992 allowed the appeal of the defendants and dismissed the suit filed by the plaintiff-Niku Ram, by holding as under :-

“8. The case of the plaintiff is that he purchased 300 Sq. Yards land vide registered sale deed dated 30-12-1948 from Munshi s/o Fataha and on this land he constructed his house over an area of 100 yards and the remaining 200 Sq. Yards was given by him to Sher Singh father of defendants 1 & 2 and in lieu of the same the plaintiff got the plot measuring 186 Sq. yards which is now in dispute situated in Mohalla Kala Pathar, Hansi which Sher Singh purchased in the year 1946 vide sale deed Ex. D8. According to the plaintiff since the date of exchange he is owner in possession of the land measuring 186 Sq. yards. On the other hand the case of the defendants is that the land measuring 300 Sq. yards was purchased by all the three brothers namely Niku, Padma and Sher Singh, although the same was purchased in the name of Niku alone but after the purchase the three brothers constructed their houses of 100 sq . yards each since then they have been residing in said houses alongwith their family members. Defendants No. 1 & 2 have taken the plea that the land measuring 186 Sq.Yds was purchased by their father Sher Singh in the year 1946 vide sale deed Ex. D-8 and this plot was never given in exchange by their father to the plaintiff and since the day of purchase the defendants are owners in possession and the plaintiff has got no concern with the same. A perusal of the judgment of the lower court shows that the lower court decided issues No. 1, 2 & 8 together and vide issue No. 16 which is relief issue the lower court observed that a decree is passed for permanent prohibitory injunction in favour of the plaintiff and against the defendants restraining the defendants from interfering in the possession of the plaintiff over the house bearing-Municipal Committee No. 237

and constructed on 100 sq. yards plot. In this manner it clearly shows that the lower court did not apply its mind at all while deciding the suit because the house bearing Municipal No. 237 measuring 100 Sq. Yds was not in dispute at all. Rather the dispute was relating to the plot measuring 186 Sq. Yards. This shows that the lower court did not apply its judicial mind at all while deciding the suit and therefore, a wrong decree has been passed regarding the property which was never in dispute.

9. Now it is to be seen whether Niku plaintiff has been able to prove the owner in possession of the site in dispute measuring 186 Sq. yards situated in Mohalla Kala Pather, Hansi. It is admitted fact that Sher Singh father of defendants 1 & 2 purchased the present property vide sale deed Ex.D-8 in the year 1946. The case of the plaintiff is that he got the suit property in exchange in lieu of 200 Sq. Yards of land which he gave to Sher Singh, father of the defendants No. 1 & 2. The lower Court did not decide the question of exchange and observed that the exchange of land stands settled by judgment and decree Ex. P-4 and P-5, However, as against this judgment Ex. P-4 and decree P-5 the appeal was already pending and it did not become final between the parties and therefore, the lower court erred in not deciding the question of exchange and has wrongly placed reliance upon the judgment and decree Ex. P-4 and Ex. P-5 which did not become final. Niku Ram plaintiff appeared as PW.1 who stated that he became owner of the suit property by way of exchange. He has not produced any document in support of his assertion. Similarly he did not name any persons in whose presence the exchange might have taken place. PW.3 Bir Singh is the son of Niku Ram who stated in cross examination that at the time of the alleged exchange Ran Singh, Sadhu Ram, the witness and Niku Ram father of the witness and Sher Singh, father of defendants 1 & 2 were present and no exchange deed was written because it was an oral exchange. But the plaintiff did not examine either Ran Singh or Sadhu Ram to support the assertion of the exchange. Since it was an oral exchange which

took place in the presence of Ran Singh and Sadhu Ram, so the plaintiff was duty bound to have produced the witnesses to prove the factum of exchange. In this manner there is no evidence on record worth the name which may go to show that any exchange might have taken place between the plaintiff & Sher Singh, father of defendants 1 & 2. Except two self serving statements of Niku-plaintiff and his son Bir Singh PW.3 there is no other oral and documentary evidence to support the assertion of the plaintiff regarding the alleged exchange. Plaintiff also examined PW.4 Man Pal Advocate who has appointed as Local Commissioner to see the possession of the plot in dispute and he has stated in the cross-examination that he merely tried to give notice to the defendants but they did not come present and therefore, no notice was given by him to the defendants. The witness stated that he did not record any statement of any witness at the spot. He further stated that he did not measure the disputed place. He stated that he did not inspect the record from Municipal Committee. He also stated that the plaintiff and his son Yaswant were present, apart from the wife of the plaintiff. No respectable was joined by the Local Commissioner before visiting the spot. No effective notice was given to the defendants by the Local Commissioner before visiting the spot and he did not effect any measurement. In this manner evidence of PW 4 Man Pal Advocate who acted as Local Commissioner is not sufficient to prove the possession of the plaintiff over the suit property. It is admitted by plaintiff himself that all the three brothers had been living in their houses consisting of 100 Sq. Yds each for the last 20/25 years which goes to show that actually the three brothers purchased 300 Sq. Yards land in the name of Niku but they constructed their separate houses on 100 Sq. yards each and thereafter they started living in their respective house. From the sale deed Ex. P-8 it is proved that Sher Singh father of defendants 1 & 2 purchased the plot in dispute and he never gave it in exchange to the plaintiff for the last 20 years as claimed by the plaintiff in the plaint. The lower court wrongly

placed reliance upon the judgment Ex.P4 and Ex.P5 and has wrongly decreed the suit of the plaintiff making the base of these two documents. These two documents should not have been made the base because the judgment and decree did not become final between the parties as an appeal was already pending in the Appellate Court, so the lower court should have recorded independent witnesses in the present case to arrive at the conclusion whether the plaintiff was owner in possession of the property in dispute and that he got the same in exchange from Sher Singh, father of defendants 1 & 2. However, there is not an iota of evidence on the file to show that the plaintiff might be owner in possession of the plot in dispute and that he might have got the same exchanged from Sher Singh father of defendants 1 & 2. On the contrary it is proved from the evidence of the parties that 300 Sq. Yards was purchased by Niku in his own name but with joint funds and thereafter the three brothers constructed their houses separately and they started living in their respective house. The plot in dispute was alone purchased by Sher Singh, father of defendants 1 &2 in the year 1846 and he never gave in exchange to the plaintiff. Even DW.2 Munshi Ram has stated on oath that the three brothers purchased 300 Sq. Yards of land from him and all the three contributed equally towards the sale price and thereafter they constructed three houses and they started living in their respective houses. Munshi Ram DW2 is an independent witness and he is not inimical towards the plaintiff in any manner and there is no reason to disbelieve the testimony of DW2 Munshi Ram who is aged 80 years who is admittedly the seller of the land measuring 300 Sq. Yards to Niku Ram. Similarly DW.3 Sikhar Chand who resides in the same Mohalla --- that three brothers namely Niku, Padma and Sher Singh purchased 300 Sq. Yards land from Munshi and thereafter they constructed their own houses on 100 Sq. Yards each and since then they have been living in their respective house. He further stated that Sher Singh alone is the owner in possession of the plot in dispute measuring 186 Sq. Yards and

it was Sher Singh who got constructed a room in this plot and Sher Singh never gave this plot in exchange to the plaintiff Niku and after the death of Sher Singh his sons are in possession of the plot alongwith the construction raised thereupon. There is no evidence worth the same to show that the plaintiff might have become owner by way of adverse possession. Even otherwise the plea of adverse possession is contradictory plea because on the one hand the plaintiff claims to be the owner of the disputed property on the basis of exchange and in the same breath he claims that he has become owner due to adverse possession. No doubt an alternative plea can be taken but a contradictory plea cannot be taken. In the present case it is a contradictory plea which has been taken by the plaintiff. Even otherwise the plaintiff has miserably failed to prove that either he become owner of the plot in dispute by way of exchange or by way of adverse possession. The lower court has wrongly decreed the suit of the plaintiff. There is merit in the appeal filed by the defendants and the same is hereby accepted. The judgment and decree of the lower Court is hereby set aside. As a result of this the suit filed by the plaintiff Niku Ram against the defendants in respect of the suit property is hereby dismissed. However, the parties are left to bear their own costs.”

12. I have carefully gone through the findings/observations made by the learned First Appellate Court and upon considering the same, I am of the considered view that the learned trial Court had returned mutually destructive findings. On one hand, the learned trial Court held that there was an oral exchange whereas on the other hand, a finding has been returned that the plaintiff has become owner by way of adverse possession. It is further observed from the findings returned by the learned trial Court that it had mixed up the land, which was actually in dispute. I am further of the view that the findings of the first Appellate Court, are based upon appreciation of facts/pleadings as well as the evidence on record and I see

no illegality or perversity in the findings returned by the first Appellate Court. Furthermore, no question of law, much less a substantial question of law, is involved herein, so as to exercise appellate jurisdiction under Section 100 of Civil Procedure Code, 1908.

13. In view of the above, the present appeal is dismissed, being bereft of any merit. Resultantly, the impugned judgment and decree dated 08.09.1992 passed by the learned Additional District Judge, Hisar; is maintained.

14. All pending application/s, if any, shall also stand closed.

February 17, 2025
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No