



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

**RSA-3216-1998(O&M)
Reserved on: 03.02.2025
Pronounced on: 11.02.2025**

**Haryana Urban Development Authority
and another**

...Appellants

Vs.

Kanwaljit Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arvind Seth, Advocate
for the appellant(s).

Mr. Uday Agnihotri, Advocate
for respondents.

ANIL KSHETARPAL, J.

1. The defendants assail the correctness of concurrent findings of fact arrived at by the Courts below while decreeing plaintiffs' suit for grant of decree of declaration with consequential relief of permanent injunction. The appellant is an instrumentality of State of Haryana, which is carrying out development in the State by carving out plots, parks, roads and thereafter, allotting to the interested persons.

2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

3. On 26.07.1969, approximately 5000 sq. yard plot was allotted to Sh. G.K. Sethi. The tentative price of the property was @ Rs. 9/- per sq. yard. Hence, the total price was tentatively Rs. 45,000/-. However, vide Ex.P-3,



Sh. G.K. Sethi was delivered possession of the plot measuring 7620 sq. yard in the year 1973. In the year 1974, Sh. G.K. Sethi sought permission to transfer the plot in favour of Sh. Kanwaljit Singh and Smt. Kuldeep Kaur. In support of the aforesaid application for transfer, two indemnity bonds, one by Sh. G.K. Sethi, and second by Sh. Kanwaljit Singh were filed disclosing that 7620 sq. yard is the total area of the plot. On 09.05.1974, permission to transfer the plot in the name of Sh. Kanwaljit Singh and Smt. Kuldeep Kaur was granted. On 03.10.1979, registered sale/conveyance deed with respect to plot measuring 4620 sq. yard was executed in favour of Smt. Kuldeep Kaur and Sh. Kanwaljit Singh. Subsequently, the plaintiffs after getting approval from Chief Inspector of Factories as well as Estate Officer, Haryana Urban Development Authority (hereinafter referred to as 'HUDA') constructed the building. They filed a suit for grant of decree of declaration claiming to be owners in possession of the plot measuring 7620 sq yard, Faridabad, with a consequential relief of permanent injunction restraining the defendants from interfering into possession of the plaintiffs or their tenants forcibly and illegally.

4. The defendants contested the suit on the ground that the possession of 7620 sq. yards was wrongly delivered but the defendants or their predecessor in interest were never allotted 7620 sq. yard. It was asserted that vide conveyance deed dated 03.10.1979, 4620 sq. yard plot was sold and the defendants are not entitled to claim ownership of remaining area.

5. Replication was filed by the plaintiffs while controverting the stand taken by the defendants. The trial Court identified the following issues for adjudication:-

"1. Whether the plaintiff is owner in possession of the plot No. 18, Sector 24, Faridabad as alleged? OPP



2. *What was the area of the possession of which was given to the plaintiff on 18.6.73? OPD*
3. *Whether the plaintiff has become owner in possession of the plot measuring 7620 sq. yards bearing No. 18 Sector 24, Faridabad by way of adverse possession? OPP*
4. *Whether the plaintiffs have raised construction over the entire plot measuring 7620 sq. yards in the year 1974, if so to what effect? OPD*
5. *Whether the defendants have threatened the plaintiff to demolish the construction and dispossessing the plaintiff from the plot as alleged? OPP*
6. *Whether the Civil Court has no jurisdiction to try and entertain the present suit? OPD*
7. *Whether the plaintiffs have not come to the court with clean hands? OPD*
8. *Whether the suit is barred by limitation? OPD*
9. *Relief.”*

6. In oral evidence the plaintiffs examined PW1-Sh. Ranjit Singh, PW2- Sh. Kanwaljit Singh (plaintiff No.1). The documentary evidence was also produced. On the other hand, defendants examined DW1-Jagdish Kumar, Building Inspector, DW2-Sh. Ranjit Singh, Assistant and produced documentary evidence.

7. Both the Courts decreed the suits on the following three grounds:-
- I. The plaintiffs were delivered possession of 7620 sq. yard plot and they were permitted to construct.
 - II. The defendants are estopped from taking possession after having delivered possession and permitting the plaintiffs to construct the building.



III. The plaintiffs have perfected their title by way of adverse possession.

8. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book alongwith the requisition record.

9. The ownership of immovable property worth more than Rs.100/- can be transferred by a registered instrument. Ex.P8 is a copy of a conveyance deed/sale deed executed by HUDA in favour of the plaintiffs, namely, Smt. Kuldeep Kaur and Sh. Kanwaljit Singh with respect to plot measuring 4620 sq. yard. There is no reference to 7620 sq. yard plot. The delivery of possession of excess area would not confer ownership upon the plaintiffs. A perusal of allotment letter dated 26.07.1969, Ex.P1 proves that tentatively plot was sold @ Rs. 9/- per sq. yard. Approximate area of the plot was specified as 5000 sq. yard, which was subject to verification at the spot. The total price of the land was accordingly calculated @ Rs.45,000/-, which was payable either in lump sum or in installments. The plaintiffs had not produced any evidence to prove that they or their predecessor were ever allotted plot measuring 7620 sq. yard. Both the Courts have erred in declaring the plaintiffs to be owner of 7620 sq. yard plot on the basis of delivery of possession, indemnity bonds executed by the plaintiffs and their predecessors and sanction of building plan with respect to area measuring 270' x 254' plot, which comes to 7620 sq. yard. All these three documents are not sufficient to confer ownership of immovable property worth more than Rs.100/-. The indemnity bonds were executed by the plaintiffs as well as their predecessor while submitting application for permission to transfer the plot, which was ultimately granted on 09.05.1974, Ex.P-6.



However, the indemnity bonds only prove that the original allottee was in possession of the plot measuring 7620 sq. yard, which was transferred to the plaintiffs. However, ownership of the immovable property can be transferred only by registered instrument as required under Section 17 of the Registration Act, 1908. The plaintiffs have failed to prove any evidence that they were allotted plot measuring 7620 sq. yard.

10. Similarly, rule of estoppel cannot be invoked against the defendants only because the original allottee was delivered possession of 7620 sq. yard plot. Even, if an official of HUDA committed mistake that would not be sufficient to vest the immovable property in favour of the plaintiffs. The possession of plot was delivered by the Divisional Town Planner, Sector 15, Faridabad. A copy of the letter was forwarded to the Administrator, HUDA. There is no declaration that plaintiffs or their predecessor had become owner of the plot measuring 7620 sq. yard. It only proves that plaintiffs were in permissive possession.

11. Before declaring that the plaintiffs have become owner by way of adverse possession, the plaintiffs were required to prove on (i) what date they came into possession; (ii) what was the nature of their possession; (iii) whether the factum of possession was known to the other party; (iv) how long their possession continued; (v) their possession was open and undisturbed.

12. In this case, the possession of the plaintiffs or their predecessors was permissive. No evidence has been led by the plaintiffs to prove as to when their possession became adverse. Permissive possession and adverse possession are not synonyms. In fact, adverse possession implies that it commenced wrong and is maintained against right. When the commencement and continuation of



possession is legal and proper referable to a contract, there is no question of any adverse possession. Reliance in this regard can be placed on the Supreme Court judgment in '*Achal Reddi vs Ramakrishna Reddiar And Ors*', 1990(4) SCC 706, which has been followed in '*Mohan Lal (Deceased) through Lrs vs. Mirza Abdul Gaffar*' 1996(1) SCC 639. In this case, the delivery of possession in favour of the predecessor of the plaintiff was somewhere in the year 1973. Subsequently, the plaintiffs were transferred possession by their predecessor, the allottee. Hence, their possession continued as permissive. The period of 12 years is required to be calculated from the date the possession of plaintiffs became adverse or hostile, however, no evidence has been led in this regard by the plaintiffs.

13. Keeping in view the aforesaid discussion, the judgment passed by both the Courts below are not sustainable, hence, set aside. Consequently, the appeal is allowed and the suit filed by the plaintiffs shall stand dismissed.

14. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

11.02.2025

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Whether speaking/reasoned : Yes No

Whether Reportable : Yes No