

Supreme Court of India

Parsinni (Dead) By Lrs. And Ors. vs Sukhi And Ors. on 15 September, 1993

Equivalent citations: JT 1993 (5) SC 435, 1993 (3) SCALE 784, (1993) 4 SCC 375, 1993 Supp 2 SCR 315

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Bench: K Singh, M Punchhi, K Ramaswamy

JUDGMENT K. Ramaswamy, J.

1. The appellants/defendants' appeal by special leave arises against the judgment and decree of the Punjab & Haryana High Court in Regular Second Appeal No. 1822 of 1973 dated Sept. 21, 1982. The respondents filed a suit for declaration of title to and for possession of 53 kanals 12 marlas from the appellants. The trial court in File No. 40 dismissed the suit. The Addl. District Judge, Barnala reversed the decree of the trial court and decreed the suit in Civil Appeal No. 121 of 1965 by judgment and decree dated November 28, 1973. The High Court confirmed the appellate decree. One Wazira Singh died surviving three sons Sukhi, Surjan and Sarwan through his first wife, Mahla Singh son and Parsinni and Chinto two minor daughters through his second wife. Wazira had died on 5.11.1984 B.K. Parsinni is the 1st defendant and Chinto died leaving behind her children defendant Nos. 2 to 5. From the evidence it would be clear that, after the death of Wazira, there was a division of the properties by meets and bounds and 53 kanals 12 marlas were left in the possession of Parsinni and Chinto for their enjoyment. The Mutation No. 1722 Ex. P-8 on 10.2.85 B.K. discloses that they shall remain in possession and enjoyment till their marriage or death whichever is earlier. Their marriage took place between 1990-91 to 1994-99 B.K. It is not in dispute that even thereafter for well over 30 years, the appellants continued to remain in possession and enjoyment as owners to the exclusion of the respondent Sukhi and other heirs asserted their title for the first time in 1963 by filing the suit for declaration that they are the owners of 135 kanals 6 marlas including 53 kanals 12 marlas, situated in Bihla village. We are concerned only with 53 kanals and 12 marlas in this appeal.

2. It is the case of the respondents that 53 kanals 12 marlas continued to remain in their possession and enjoyment. Parsinni and Chinto were never in possession and enjoyment. For the first time they came across, after a suit filed by them in the court of the Sub-Collector against the tenants for recovery of the rents and decree thereon was passed in their favour, that they are asserting their rights as owners of the property. Therefore, the above suit initially was filed for declaration of the title to and for injunction and later converted -to relief of possession.

3. The trial court found that ever since the demise of Wazira the appellants remained in possession and enjoyment. After the suit they became separated. They remained in possession as owners and they perfected their title by prescription, after their marriage for having been in possession for more than 30 years. The suit was also held to have been barred by limitation. Accordingly it dismissed the suit. The appellate court reversed the decree holding that the revenue entries disclose that the appellants remained in possession as owners along with their brothers and no specific share was given. Therefore, they did not acquire any separate right. The respondents claimed possession and proprietary right therein and entries in revenue records do not disclose having been lost their title for more than 12 years. Therefore, they became owners of the land and remained to be owners and possession being not adverse the appellants did not acquire title by prescription. The High Court

without adverting to the question of adverse possession, confirmed the appellate decree.

4. The sole question that emerges is whether the appellants have perfected their title by prescription. By Article 65 of the Schedule to the Limitation Act, 1963 for short 'The Act' for possession of immovable property or any interest therein based on title, 12 years' period begins to run when the possession of the defendant becomes adverse to the plaintiff. As stated earlier, on the demise of Wazira Singh, mutation was effected and sanctioned by the authorities that Parsinni and Chinto, daughters of Wazira Singh came into possession of 53 kanals 12 marlas of the suit property. They, being unmarried minor daughters, under law they are entitled to maintenance till they are married and in lieu thereof the property was given and remained in possession and enjoyment of the lands. They were married in 1991-92 and 1994-95 B.K. Thereafter the respondents, as per the entires in revenue records, had right to claim possession from the appellants but they did not do so. On the other hand the appellants remained in possession and enjoyment without any let or hindrance; the continuous entires in revenue records show them as owners. They are in enjoyment by leasing the lands to the tenants as evidenced by the judgment and the decree of the Revenue Court to the exclusion of the respondents. It would show their open assertion of their own right. There was no attempt to take possession \_ of the land by the respondents. Even after consolidation also the lands remained to be in their possession and enjoyment and recorded as owners.

5. The appellants claimed adverse possession. The burden undoubtedly lies on them to plead and prove that they remained in possession in their own right adverse to the respondents. In fact, they have pleaded and succeeded and the trial court accepted with the findings thus, "The defendants 1 to 5 were accepted as owners to the extent of 1/ 3rd share in the estate of Wazira and they continued to hold their shares as such owners till the present day. There is absolutely no material on record to show that the plaintiffs were the owners or shared with the ownership of defendants Nos. 1 to 5. The oral deposition of Surjan Singh carried little weight, evidence is contradicted by Mahla Singh, DW-1 who had an interest in the suit land to the same extent as the plaintiffs... Even if it be assumed that the ownership of the daughters of Wazira was valid till their marriages and even then the ownerships of both Parsinni and Chinto or her heirs continued till the present day and on their marriage the rights of the daughters, if were extinguished, they still continued to hold as owners of the suit land and after as many as 30 years they certainly have become full owners by prescription." "The entries Ex.P-3, P-4 is sufficient to show that the plaintiff were excluded from the right of ownership by the daughters and since no steps were taken for a number of years the right is time barred". The District Judge proceeded on the premise that the respondents continued as co-owners and that, therefore, they were not excluded. The possession of the appellants were not adverse to the right of the respondents. We find it difficult to accept the said finding. Female heirs in pre-existing law were not co-owners. Possession is prima facie evidence of title. Party claiming adverse possession must prove that his possession must be "nee vi nee clam nee precario" i.e. peaceful, open and continuous. The possession must be adequate, in continuity, in publicity and in extent to show that their possession is adverse to the true owner. When the appellants claimed title to the suit lands it is sufficient for them to show that their possession is overt and without any attempt at concealment so that the respondent against whom time is running, ought, if to exercise due vigilance to be aware of what is happening. The possession of the appellants was adverse to the respondents inasmuch as the respondents ever since the marriage of the first appellant and her

sister Chinto continued to remain in possession and enjoyment of the property in derogation of the right, title and interest hitherto held by the respondents. When they openly and to the knowledge of the respondents continuously remained in possession and enjoyment and the entries in the revenue records established that their possession and enjoyment is as owners, the consent of the respondents initially given to remain in possession till their marriage or death whichever is earlier does not prevent possession being adverse after their marriage. Without any let or hindrance they remained in possession and enjoyment excluding the respondents from sharing the usufruct from those lands. The test is whether the appellants are able to show that they held lands for themselves and if they did so the mere fact that there was acquiescence or consent at the inception on the part of the respondents make no difference. Since possession and enjoyment of the first appellant and her sister Chinto was to the exclusion of the respondents' brothers, for well over 30 years it is proved that the appellants were in possession and enjoyment openly and continuously in assertion of their right as owners. The entries in the revenue recorded continuously for 30 years would corroborate their plea of adverse possession and militates against the claim of the title of the respondents. The plea that the appellants were never in-possession and enjoyment is belied by the entries in the revenue records. The suit was filed in 1963 asserting their rights as owners for the first time by which date the appellants have perfected their titles by prescription. The High Court did not advert to this aspect of the matter. Therefore, we have no hesitation to hold that the appellants have perfected their title to the 53 kanals 12 marlas by prescription and the suit is barred by limitation under Article 65 of the Schedule to the Act. The appeal is accordingly allowed, the decree of the High Court and that of the first appellate court are set aside and that of the trial court is restored No. costs.