

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.8424 2009

GURTEJ SINGH

... APPELLANT

Versus

ZORA SINGH (DEAD) THROUGH LR & ORS.

... RESPONDENTS

O R D E R

The instant appeal, by way of special leave, is directed against order dated 17.11.2008 passed by the High Court of Punjab and Haryana at Chandigarh in Regular Second Appeal No.998 of 2007 whereby the High Court dismissed the appeal filed by the appellant herein and affirmed the order passed by the lower appellate Court.

Brief facts in nutshell for proper adjudication of the dispute involved in the present appeal are that the appellant/plaintiff filed a suit for declaration and injunction seeking a decree that he was owner in possession of land by way of adverse possession. The trial court decreed the suit in favour of the appellant/plaintiff. On an appeal being preferred by the respondent/defendant, the Additional District Judge set aside the trial court's order on the grounds that the remedy of adverse possession is not available to the appellant/plaintiff and the possession of a mortgagee cannot be treated as adverse to the true owner.

Feeling aggrieved by the order of the Additional District Judge, the appellant/plaintiff preferred a regular second appeal

before the High Court, which dismissed the appeal relying upon the judgment of the Punjab and Haryana High Court in Bhim Singh and others vs. Zile Singh and others, (2006) 3 RCR (Civil) 97, on the ground that the plaintiff cannot sue for title on the basis of adverse possession. The question of limitation and whether a mortgagee can claim adverse possession was not examined and answered.

Aggrieved by the order of the High Court, the appellant/plaintiff has approached this Court by preferring the present appeal by way of special leave.

Learned counsel for the appellant/plaintiff vehemently contended that the suit for declaration filed by his client could not be dismissed on the ground that the plea of adverse possession was only available to a defendant as a defence in a suit for possession. In support of his argument, learned counsel for the appellant relied upon the judgment rendered by this Court in Ravinder Kaur Grewal and others vs. Manjit Kaur and others, (2019) 8 SCC 729 wherein this Court has held that plea of acquisition of title by adverse possession can be taken by the plaintiff. It is highlighted that the other pleas and contentions of the appellant/plaintiff have not been examined and answered by the High Court.

Per contra, learned counsel for the respondents submits that the appellant cannot claim title on the basis of adverse possession. According to the learned counsel, it is the respondent who is owner of the suit property and the same is in possession of the appellant as mortgagee and not as an owner.

Having heard learned counsel for the parties and carefully perusing the records placed before us, we are of the view that the High Court dismissed the second appeal without framing any question of law and simply relying on the judgment rendered by it in Bhim Singh and others (supra) wherein it has been held that plea of adverse possession is available only to a defendant and that a suit on the basis of adverse possession would not lie. However, the High Court has not gone into other issues.

Taking into consideration the fact that this Court in the Ravinder Kaur Grewal case(supra) has considered the judgment in the Bhim Singh case (supra) and explicitly overruled it, we are of the considered view that the impugned order passed by the High Court should be set aside and the matter be remanded to the High Court for fresh consideration in accordance with law. Ordered accordingly.

Taking into consideration the facts and circumstances of the present case, we request the High Court to make an endeavour to dispose of the matter expeditiously.

The appeal stands disposed of accordingly.

.....J.
(N.V.RAMANA)

.....J.
(SANJIV KHANNA)

.....J.
(KRISHNA MURARI)

NEW DELHI;
FEBRUARY 26, 2020.

ITEM NO.102

COURT NO.2

SECTION IV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCivil Appeal No(s).8424/2009

GURTEJ SINGH

Appellant(s)

VERSUS

ZORA SINGH (DEAD) THROUGH LR & ORS.

Respondent(s)

Date : 26-02-2020 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE KRISHNA MURARI

For Appellant(s) Ms. Tanuj Bagga, AOR

For Respondent(s) Mr. R.S.Rangpuri, Adv.
Mr. Dinesh Verma, Adv.
Mr. Subhasish Bhowmick, AOR

UPON hearing the counsel the Court made the following

O R D E R . i n

A L L A B O U T L A W

The appeal stands disposed of in terms of the signed order.

(SATISH KUMAR YADAV)
AR-CUM-PS(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed order is placed on the file)