Before Rameshwar Singh Malik, J.

HARDEV SINGH @ MAJOR SINGH—*Appellant*

versus

SATNAM SINGH OTHER—*Respondent*

RSA No.4539 of 2017

October 09, 2017

Code of Civil Procedure, 1908—Suit for possession—Decreed and both appeals dismissed—Ownership of plaintiffs—Undisputed on record—Defendants' plea of adverse possession would not ripen into ownership—Defendants purchased suit property from vendor, who claimed himself to be in adverse possession—Defendants' possession would start only from date of alleged sale—Defendants held to be in unauthorized possession.

Held that, ownership of the plaintiffs/respondents has gone undisputed on record. This was the reason that the defendants took the plea of adverse possession. It is also the settled proposition of law that plea of adverse possession would always presuppose the ownership of other side. Under these undisputed circumstances of the case, the only question that was left to be decided was whether the adverse possession set up by the defendants has ripen into ownership or not. However, it has been fairly conceded by the learned senior counsel for the appellant that since the appellant purchased the suit property from his vendor, who claimed himself to be in adverse possession, his possession would start only from the date of alleged sale in favour of the appellant. Once this has been the undisputed fact situation obtaining on record of the case, it can be safely concluded that both the learned courts below committed no error of law, while recording their concurrent findings of facts, decreeing the suit of the plaintiffs and the impugned judgments and decrees deserve to be upheld.

(Para 7)

Further held that, in spite of the fact that the defendants were in totally un-authorised and illegal possession over the suit property, plaintiffs did not try to dispossess the defendants forcibly. They adopted proper course of law and filed the suit for possession on the basis of their title. Since the defendants including the appellant were not at all claiming any title qua the suit land nor the adverse possession of their vendor had matured into ownership, they were bound to fail.

That is what has been held by both the learned courts below, while recording their concurrent findings of facts. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

(Para 10)

M.S.Khaira, Sr. Advocate
With D.S.Randhawa, Advocate
for the appellant.

Shubreet Kaur, Advocate
for respondents/caveatorsNo.1 to 4.

RAMESHWAR SINGH MALIK, J. (Oral)

(1) Unsuccessful defendant No.2 is in the regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit for possession on the basis of title, filed by the plaintiffs-respondents was decreed by the learned trial court, vide its impugned judgment and decree dated 3.7.2014 and first appeal of the defendants was also dismissed by the learned Additional District Judge, vide his impugned judgment and decree dated 15.12.2016, upholding the judgment and decree of the learned trial court.

(2) Brief facts of the case, as noticed by the learned first appellate court in paras 1 and 2 of the impugned judgment, are that the plaintiffs- respondents claiming themselves to be the owners of the suit propertymeasuring 2 Kanal 12 Marlas bearing Khasra No.281 min (1-0), 281 min(1- 2) denoted by Khewat No.1/1 and Khatauni No.2-3 situated in the area of Village Bilaspur, Tehsil Nihal Singh Wala, District Moga as per Jamabandi for the year 2005-06 and further claiming their said property to have been illegally encroached upon by the defendants (appellants and respondents Nos.5 and 6 herein), filed a suit for possession of the said property on the strength of their title therein.

(3) Upon notice of the suit, only the appellants and respondent No.5 herein (defendants Nos.1 to 3 before the learned lower court) came forward to oppose the claim of the plaintiffs, while defendant No.4 (respondent No.6 herein) did not appear and was proceeded against exparte. The contesting defendants Nos.1 and 2 filed their joint written statement, wherein they raised the preliminary objections dubbing the suit to be barred by law of limitation and further

contending the plaintiffs to be guilty of concealment of material facts. On merits, the said defendants admitted the ownership of the plaintiffs in respect of suit property only to the extent of 1/2 share while the remaining 1/2 share, according to versionof the appellants-defendants was the ownership of Kartar Singh. They further added that the land bearing Khasra No.281 min (1-0) was in adverse possession of Amar Singh since 1.10.1971 and from the same date, the land bearing Khasra No.281 min (1-2) was in adverse possession of Kartar Singh as was reflected in the Jamabandi for the year 1975-76. According to further version of the defendants, Iqbal Singh son of Kartar Singh and Kartar Singh son of Sunder Singh sold one Kanal of land to defendant No.1 for consideration of Rs.99/- by means of sale deed dated 14.5.1994 and likewise Smt.Gian Kaur widow of Amar Singh sold 16 Marlas of land as shown in yellow colour in the site plan to defendant No.2 vide sale deed dated 26.5.1988. They averred further that they have raised construction over the suit land by spending huge amount. All other allegations were denied and a prayer for dismissal of the suit was made by these defendants-appellants.

(4) On completion of pleadings of the parties, learned trial Court framed the following issues:-

(1) Whether the plaintiffs are owners of the suit property? OPP.

(2) Whether the plaintiffs are entitled for possession of the same? OPP.

(3) Whether the plaintiffs have withheld the material facts fromthe Court? If so, to what effect. OPD.

(4) Whether the suit is properly valued for the purpose of Courtfee and jurisdiction? OPD.

(5) Whether the suit is within limitation? OPD.

(6) Relief.

(5) With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiffs have duly proved their case by bringing on record cogent and convincing evidence, which was sufficient to decree the suit for possession filed by the plaintiffs-respondents on the basis of their title. Accordingly, suit was decreed by the learned trial court, vide

its impugned judgment and decree dated 3.7.2014. Feeling aggrieved, defendants filed their first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 15.12.2016. Hence this regular second appeal, at the hands of unsuccessful defendant No.2.

(6) Heard learned counsel for the parties.

(7) As noticed hereinabove, ownership of the plaintiffs-respondents has gone undisputed on record. This was the reason that the defendants took the plea of adverse possession. It is also the settled proposition of law that plea of adverse possession would always pre- suppose the ownership of other side. Under these undisputed circumstances of the case, the only question that was left to be decided was whether the adverse possession set up by the defendants has ripen into ownership or not. However, it has been fairly conceded by the learned senior counsel for the appellant that since the appellant purchased the suit property from his vendor, who claimed himself to be in adverse possession, his possession would start only from the date of alleged sale in favour of the appellant. Once this has been the undisputed fact situation obtaining on record of the case, it can be safely concluded that both the learned courts below committed no error of law, while recording their concurrent findings of facts, decreeing the suit of the plaintiffs and the impugned judgments and decrees deserve to be upheld.

(8) So far as the judgments of the Hon'ble Supreme Court relied upon by the learned counsel for the appellant in ***State of West Bengal*** versus ***The Dalhousie Institute Society***[1] *and* ***Jagat Ram*** versus ***Virender Prakes***,[2] are concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgments, both the judgments have not been found to be of any help to the appellant, being clearly distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in ***Padmasundara Rao (Dead)*** versus ***State of Tamil Nadu*** **and** ***other***[3] ***Union of India*** versus ***Amrit Lal Manchandaand***

[1] 1970(3) SCC 802
[2] 2006 (3) RCR (Civil) 429
[3] 2002 (3) SCC 533

others[4]**, *State of Orissa*** versus ***Md. Illiya***[5] **and State of Rajasthan** versus **Ganeshi Lal,**[6]**.**

(9) With a view to avoid repetition and also for the sake of brevity, the observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in ***Ganeshi Lal's case*** (supra), reiterating its view taken in ***Amrit Lal Manchanda's case*** (supra) and ***Mohd. Illiyas's case*** (supra), which can be gainfully followed in the present case, read as under:-

> 11. "12….Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read

[4] 2004 (3) SCC 75
[5] 2006 (1) SCC 275
[6] 2008 (2) SCC 533.

as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. **Ed.** See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15….Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (AII ER p. 14 C- D)

"The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that

most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (AII ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (AII ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or differentfact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matterof applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it Ed. See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."

(10) In spite of the fact that the defendants were in totally unauthorised and illegal possession over the suit property, plaintiffs did not try to dispossess the defendants forcibly. They adopted proper course oflaw and filed the suit for possession on the basis of their title. Since the defendants including the appellant were not at all claiming any title qua the suit land nor the adverse possession of their vendor had matured into ownership, they were bound to fail. That is what has been held by both the learned courts below, while recording their concurrent findings of facts.

Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

(11) Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by the learned first appellate court in para 9 of its impugned judgment, which deserve to be noticed here, read as under:-

> "As stands recapitulated hereinabove, the claim of the plaintiffs-appellants was based upon their title in respect ofsuit land and even the defendants Nos.1 and 2 who are the appellants herein, in their Written reply also admitted the ownership of the plaintiffs qua the suit property though according to them the plaintiffs owned only 1⁄2 share therein while the remaining 1⁄2 share according to version of the defendants-appellants was owned by Kartar Singh. Said Kartar Singh was none else but real brother of Avtar Singh, father of the plaintiffs-respondents Nos.1 to 4. Even the defendants themselves have admitted that originally the property in question belonged to one Kaku Singh who was the great grand father of the plaintiffs but came up with the plea that 1⁄2 share of the property was inherited by Iqbal Singh son of Kartar Singh son of Hamir Singh which aspect was specifically denied by the plaintiffs. However, during the course of his cross-examination, defendant Hardev Singh also admitted the said fact. As regards, the share of Kartar Singh is concerned, the same is also shown to have been inherited bythe present plaintiffs and mutation in that regard has already been sanctioned in favour of the plaintiffs vide

mutation No.14648. The aspect as to exclusive ownership of the plaintiffs in respect of suit property stands also duly established on record from the Jamabandi for the year 2005- 06 brought on record as Ex.P2. The said document being a record of rights, presumption of truthness is attached to the entries as recorded therein. Although such a presumption is rebuttable one, the defendants-appellants could not rebut the said presumption as they have not been able to bring on record any document to controvert the aspect of ownership of the plaintiffs in respect of suit property. Though, the defendants set up two tier defence i.e. their possession over the suit property being adverse one besides setting up a sale deed dated 14.5.1994 claimed to have been executed in their favour by one Iqbal Singh alleged to be son of Kartar Singh. However, in the wake of clear admission on the part of defendant Harpal Singh while facing cross-examination at the hands of the plaintiffs that Kartar Singh did not have any child, the said sale deed set up by the defendants-appellants carries no value in the eyes of law and stands rendered as a waste paper only. Moreover, the said sale deed is shown to have been executed by Iqbal Singh son of Kartar Singh and Kartar Singh son of Sunder Singh. Itis the same Kartar Singh son of Sunder Singh who is recorded to be in possession of Khasra No.281(1-2) as Gair Marusi and thus it remains unexplained as to how the defendants could derive any title from the persons who themselves did not have any title in any part of the suit property except that Kartar Singh son of Sunder Singh is recorded to be in possession of part of the suit property which does not ipso facto confer any right of ownership in favour of said Kartar Singh. Defendants Nos.1 and 2 have claimed to have purchased the property in their possession from the persons who were earlier in illegal possession thereof and in this regard, they have tried to bank upon the copies of Jamabandi for the year Ex.D3 to Ex.D7. As stands reflected by the said copies of Jamabandies, Amar Singh and Kartar Singh were in possession of the suit property as 'Gair Marusi' right from the year 1975-76 and it nowhere reflects the possession of the said two persons as unlawful, forcible or illegal one so as to claim conversion of such forcible and illegal possession into adverse possession

and then into ownership on the basis of adverse possession by efflux of time. Thus, the possession of the said Amar Singh and Kartar Singh can at the maximum be construed to be as that of 'tenant at Will' which can never ripen into ownership as it is a settled principle of law that once a tenant is always a tenant. Not only this, even going by the pleaded version of the defendants, all that has been averred is that the said persons were in adverse possession of the suit property without there being even a single word that such adverse possession hadever riped into ownership by efflux of time. The other sale deed relied upon by the defendants is the one claimed to have been executed by Gian Kaur widow of Kartar Singh but the said saledeed has not been proved on the record in consonance with provisions of law and the same is only a marked document as mark A on the record which cannot be taken into consideration and cannot be read into evidence. Even otherwise, Gian Kaur, the executants of the alleged sale deed was never recorded as atenant at Will in place of her husband Amar Singh. As already noted above, when Amar Singh himself did not have any title in the suit property, how could Gian Kaur in her capacity as widow of Amar Singh could pass on any title in favour of the defendants, remains totally unexplained on the record. Since the defendants claim to have acquired ownership in respect of the suit property only on the strength of the sale deed said to have been executed by Gian Kaur widow of Amar Singh on the one hand and Iqbal Singh and Kartar Singh jointly on the other, which sale deeds in view of discussion hereinabove have been held to be just waste papers, the defendants cannot be permitted to retain the possession of the suit land since the possession of the persons from whom they claim to have purchased the property, has not been proved to be adverse in nature and hence the question of their acquiring ownership on the basis of bare possession as Gair Marusi does not arise at all. As regards the aspect of limitation is concerned, the plaintiffs-respondents Nos.1 to 4 having claimed the relief on the basis of their title in the suit property which has been duly proved on the record, no period of limitation is prescribed to file a suit for possession on the basis of title and hence the suit has rightly been held to have been filed within time and the

plaintiffs have rightly been held entitled to the relief of possession as claimed by them.

(12) In fact, the defendants including the present appellant were pursuing a dishonest litigation right from day one. Once their vendor himself was not the true owner but still the defendants seek to purchase the suit property, they were well aware about the result thereof. Defendants took a calculated risk under the wrong impression that they would keep on avoiding their dispossession even in accordance with law. There was hardly any evidence in favour of the defendants including the present appellant which might have been said to be sufficient to grant any kind of relief in their favour. On the other hand, plaintiffs were undisputed ownersof the suit land and they have every right to seek possession thereof on the basis of title. That is what they did by filing the present suit for possession which was rightly decreed by both the learned courts below by recording their concurrent findings of facts. In such a situation, no fault can be found with the findings recorded by both the learned courts below and the impugned judgments and decree deserve to be upheld, for this reason as well.

(13) During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either ofthe impugned judgments passed by both the learned courts below, while recording their concurrent findings of facts. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran*** versus ***Sarojini Lakshmy***[7] and ***Santosh Hazari*** versus ***Purshottam Tiwari***[8] No other argument was raised.

(14) Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made

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[7] 2009 (2) RCR (Civil) 286
[8] 2001 (3) SCC 179.

out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

(15) Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

Shubreet Kaur