M/s. Sita Ram-Gurdas Mal
v.
Collector of the Central Excise and Assistant Collector, Central Excise, Amritsar

Bishan Narain, J.

conferred on this Court under Article 226 of the Constitution.

For all these reasons, I accept these petitions with costs and set aside the orders of the Assistant Collector (Customs), dated 26th December, 1951, of the Collector, Central Excise, New Delhi, dated 4th August, 1952, and of the Central Government made under section 191 of the Act. The customs authorities will now decide the matter after giving adequate opportunity to the petitioner to present his cases before them.

LETTERS PATENT APPEAL.

Before Bhandari, C. J. and Tek Chand, J.

RAM LAL AND OTHERS,—*Appellants*

versus

CHETU *alias* CHET RAM AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 10(P) of 1953.

1957

May, 13th

Adverse possession—Meaning of—How to be asserted—Tenant—Whether can acquire title against his landlord by adverse possession—Acts to be done by him to this end—Limitation, when begins to run in such a case—Suit for recovery of rent dismissed on the ground that relationship of landlord and tenant did not exist between the parties—Effect of—Whether proves adverse possession by the tenant—Code of Civil Procedure (V of 1908)—Section 100—Possession of land adverse or not—Finding as to—Whether second appeal lies.

Held, that adverse possession must be actual possession of another's land with intention to hold it and claim it as his own. It must commence with the wrongful dispossession of the rightful owner at some particular time; it must commence in wrong and must be maintained against right. It must be actual, open, notorious, hostile, under claim of right, continuous and exclusive and maintained for the

statutory period. Indeed, it should be so open and exclusive as to leave no doubt as to the intention of the occupant, so notorious that the owner may be presumed to have knowledge of the adverse claim and so continuous as to furnish a cause of action every day during the required period. If possession is permissive and not antagonistic to the owner, it cannot ripen into title by mere possession.

Held, that the possession of a tenant is that of his landlord and will be so presumed until the contrary is proved by clear and convincing evidence, for every presumption is in favour of possession in subordination to the true owner. Although possession of a tenant, however full and complete, does not of itself operate as an ouster of the owner, the mere fact that a person enters as a tenant does not preclude him from acquiring title against his landlord by adverse possession. It can operate as an ouster if he abandons the idea of holding as a tenant and sets up and asserts an exclusive right in himself. He must either give notice of his claim or his possession should be accompanied by some overt act asserting an ownership of such an open, notorious and hostile character as not to be easily misunderstood. The fact that a tenant continues to retain possession of the property after the expiry of the lease or the fact that he fails or refuses to pay the rent is not sufficient to show that he holds adversely to the landlord unless he actually sets up an exclusive right in himself by some clear, positive and unequivocal act. Limitation begins to run when the possession of the tenant becomes adverse to that of the owner, i.e., when the acts of the tenant are of such a character as to show that he claims exclusive ownership and denies the rights of the owner. Mere declarations are not enough.

Held, that the dismissal of a suit for the recovery of rent on the ground that the relationship of landlord and tenant did not exist between the parties can only prove that the relationship of landlord and tenant did not exist during the period in respect of which the rent was claimed, but it cannot be regarded as proof of the fact that the possession of the tenant was adverse to the landlord from the very start or that no rent was ever paid by the tenant.

Held, that the question whether the possession of land is or is not adverse is a question of fact, but a second appeal can lie from such a finding when it is a mixed question of

law and fact depending upon the proper legal conclusion to be drawn from the findings as to facts. In the present case the trial Court and the lower appellate Court do not appear to have applied their minds to the evidence furnished by the revenue records or to have drawn correct conclusions from the said evidence. The correctness and soundness of conclusions actually drawn is a question of law and the second appeal was competent.

Letters Patent Appeal under clause 52 of Ordinance No. X of 2005 Bk. (Pepsu), against the judgment and decree of Hon'ble Mr. Justice Chopra, dated 23rd January, 1953, affirming that of Shri Ranjit Singh Sarkaria, Sub-Judge, I Class, Patiala, dated 18th May, 1950, reversing that of Shri Sarup Chand Goyal, Sub-Judge, III Class, Rajpura, dated 6th June, 2005, and decreeing the suit in favour of the plaintiffs.

K. S. KAWATRA, for Appellant.

K. N. TEWARI, for Respondent.

JUDGMENT.

BHANDARI, C.J.—This appeal under clause 10 of the Letters Patent raises the question whether the possession of the appellant has ripened into ownership by efflux of time. Bhandari, C. J.

It appears that Chetu and Telu, who were co-owners in a certain plot of land situate in the erstwhile State of Patiala mortgaged the property with one Raja Ram for a sum of Rs. 433-8-0. On the 4th Baisakh, 1977 Bk., Daulat Ram and Narain Das, sons of Raja Ram, mortgagee, sold their mortgagee rights to Chhaju, father of Ram Chand, defendant No. 2. On the 7th Chet, 1982 Bk., Chetu created a further mortgage in favour of Benarsi Das and others, defendant No. 3. It appears that in the year 1987 Bk. one Harnama, father of Ram Lal and others, hereinafter referred to as the defendants, entered upon the land as a tenant of Ram Chand. On the death of Telu, Chetu acquired the proprietary rights, which had

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vested in his co-owner and in the year 2002 he paid off both the first and the second mortgagees and redeemed the mortgages. He endeavoured to obtain possession of the property but having failed to achieve his object, he brought the suit for possession out of which this appeal has arisen. The mortgagees, defendants Nos. 2 and 3, accepted the plaintiff's claim but the defendants, who were in actual physical possession of the land resisted the suit. They stated that they had been in actual physical possession of the property for a period exceeding 25 years and that the adverse possession of the land maintained for the statutory period had vested them with title thereto.

The trial Court held that the defendant had acquired title by adverse possession against the mortgagees and not against the mortgagor who was out of possession, that by holding the land adversely to the mortgagees for the statutory period the defendant had acquired the mortgagee rights, that the mortgagor had no power to be put in possession of the property without getting the property redeemed from him and that the plaintiff having failed to prove the date of the original mortgage the suit was barred by time. In this view of the case the trial Court dismissed the plaintiff's suit. The lower appellate Court upheld the finding of the trial Court that the defendant's possession was adverse to the mortgagees but was unable to endorse the view that the mortgagee was not at liberty to obtain possession of the property even by paying the mortgage money to the defendant. He, accordingly, allowed the appeal and decreed the plaintiff's suit.

The learned Single Judge before whom the second appeal was put up for consideration came to the conclusion that Harnama, father of defendant No. 1, entered upon the land as a tenant of Ram Chand mortgagee in the year 1987, that he continued paying

rent to this landlord till the year 1992, that he denied his liability to pay rent in or about 1993 and that the mortgagor brought the suit out of which the appeal has arisen in the year 2003. In view of these facts the learned Judge expressed the view that as Harnama's possession was permissive to start with and as he did not set up an exclusive title in himself till the year 1993, his adverse possession had not ripened into title in the year, 2003 and he did not acquire the mortgagee rights of his landlord Ram Chand.

Adverse possession, as the words imply, must be actual possession of another's land with intention to hold it and claim it as his own. It must commence with the wrongful dispossession of the rightful owner at some particular time; it must commence in wrong and must be maintained against right. It must be actual, open, notorious, hostile, under claim of right, continuous and exclusive and maintained for the statutory period. Indeed, it should be so open and exclusive as to leave no doubt as to the intention of the occupant, so notorious that the owner may be presumed to have knowledge of the adverse claim and so continuous as to furnish a cause of action every day during the required period.

If possession is permissive and not antagonistic to the owner, it cannot ripen into title by mere possession. Thus the possession of a tenant is that of his landlord and will be so presumed until the contrary is proved by clear and convincing evidence, for every presumption is in favour of possession in subordination to the true owner. Although possession of a tenant, however full and complete, does not of itself operate as an ouster of the owner, the mere fact that a person enters as a tenant does not preclude him from acquiring title against his landlord by adverse possession. It can operate as an ouster if he abandons the idea of holding as a tenant and sets up and asserts an

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exclusive right in himself. He must either give notice of his claim or his possession should be accompanied by some over act asserting an ownership of such an open, notorious and hostile character as not to be easily misunderstood. The fact that a tenant continues to retain possession of the property after the expiry of the lease or the fact that he fails or refuses to pay the rent is not sufficient to show that he holds adversely to the landlord unless he actually sets up an exclusive right in himself by some clear, positive and unequivocal act. Limitation begins to run when the possession of the tenant becomes adverse to that of the owner, i.e., when the acts of the tenant are of such a character as to show that he claims exclusive ownership and denies the rights of the owner. Mere declarations are not enough.

The learned counsel for the defendants contends that Harnama, father of his clients, entered upon the land as a trespasser as long ago as the year 1987, that he held adversely to Ram Chand mortgagee for a period exceeding 12 years, that the rights of the mortgagee were extinguished under section 28 of the Limitation Act, that these rights came to vest in the defendants by efflux of time and that it was the duty of the mortgagor, if he was anxious to take back his land, to bring a suit for redemption against the persons who had stepped into the shoes of Ram Chand. He endeavoured to support his plea of adverse possession by stating that Harnama did not pay any rent to Chhaju, father of Ram Chand, and that the latter was compelled to bring a suit against him for the recovery of rent. The Naib-tehsildar, who was called upon to deal with the case in or about the year 2000, came to the conclusion that the relationship of landlord and tenant did not exist between the parties and was reluctantly compelled to dismiss the suit. He disputes the correctness of the entries in the revenue

papers by stating (1) that neither Chhaju nor his son Ram Chand, who held a registered deed of mortgage in their favour were described as mortgagees in the revenue papers, and (2) that the finding of the Naib-tehsildar that Harnama was not a tenant of Chhaju or Ram Chand belied the entries in the revenue records.

The one and only question which requires decision in the present case is whether the defendants have acquired title to the property by adverse possession. The entries in the revenue papers furnish a complete answer to this question.

Now what do these entries reveal? The revenue papers to which a reference has been made by the learned Single Judge appear to indicate that Chhaju and after his death his son Ram Chand were occupying the land as tenants of the original mortgagees Daulat Ram and Narain Das; that Harnama father of the defendants was cultivating the land as a tenant-at-will of Ram Chand in 1987 Bk; that he was liable to pay *batai* in his capacity as a tenant; that he was a tenant-at-will of one Dipa, a tenant of Ram Chand, in 1991 Bk. and that Harnama paid a share of the produce to Dipa and that the latter paid a fixed yearly rent of Rs. 45 to Ram Chand. References to certain disputes concerning the payment of rent which are said to have arisen between the parties some time after 1982 Bk. appear in the *jamabandis* of 1995 Bk. and 1999 Bk. In the year 1997 Ram Chand brought an action against the defendants for the recovery of the rent, but this suit was dismissed by the Naib-tehsildar of Patiala on the 30th Maghar, 2001 Bk. on the ground that the entries in the revenue records of the said period did not show that the defendants were holding the land as tenants-at-will under the plaintiff.

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The entries in the revenue papers make it quite clear that Harnama took possession of the property as a tenant of Chhaju in the year 1987 and not as a trespasser as is alleged by the defendants; that he continued to pay the rent to the mortgagee up till the year 1992 Bk., that he omitted to pay rent for subsequent years, that the mortgagee brought a suit for the recovery of rent in the revenue Courts and that this suit was dismissed in the year 2001 Bk. on the ground that the relationship of landlord and tenant did not exist between the parties. The dismissal of this suit in the year 2001 can only prove that the relationship of landlord and tenant did not exist during the period in respect of which the rent was claimed, but it cannot be regarded as proof of the fact that the possession of the defendants was adverse to Chhaju from the very start or that no rent was ever paid by the defendants. The possession of Harnama was clearly permissive from 1987 to 1992 and, in the absence of evidence to show that the defendants ousted Chhaju or his son Ram Chand of his possession or right of possession or that this possession was hostile in its inception and continued as such without interruption for 12 years, it is impossible to hold that the defendant has acquired title to the land by adverse possession. It may be that Harnama repudiated the right of the defendants to recover rent from him, but the repudiation, if any, occurred in or about the year 1993 Bk. only ten years before Ram Chand brought the present suit for possession in the year 2003. I am not impressed with the argument that the revenue records have not been correctly prepared or that they do not present a true picture of the events which took place merely because Chhaju who was admittedly a mortgagee was described in the revenue papers as a tenant-at-will of the original mortgagees, Daulat Ram and Narain Das. The learned Single Judge observes that Chhaju was described as a tenant-at-will as he happened to be a resident of Ambala, a town

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in British India, and that the officers of the Patiala State within the limits of which the land was situate, were reluctant to sanction a mutation in his favour. Harnama is shown as being liable for payment of rent to Chhaju indicating thereby that his possession was subservient and not adverse to his landlord. There is not an iota of evidence on the file to justify the conclusion that Harnama ever made a clear, unequivocal or notorious disavowal of the title of Chhaju or that any such disavowal was made till the year 1992. I find myself in complete agreement with the learned Single Judge that the defendants have failed to establish adverse possession against the mortgagees for a period exceeding twelve years.

Nor is there any substance in the contention that as both the trial Court and the lower appellate Court had taken the view that the possession of the defendants on the land in dispute was adverse for a period exceeding 12 years, the learned Single Judge was not at liberty to disturb the concurrent findings of fact. It is true that the question whether the possession of land is or is not adverse is a question of fact, but a second appeal can lie from such a finding when it is a mixed question of law and fact depending upon the proper legal conclusion to be drawn from the findings as to facts. In the present case the trial Court and the lower appellate Court do not appear to have applied their minds to the evidence furnished by the revenue records or to have drawn correct conclusions from the said evidence. The correctness and soundness of conclusions actually drawn is a question of law.

For these reasons I would uphold the order of the learned Single Judge and dismiss the appeal with costs.

TEK CHAND, J.—I agree. Tek Chand, J.