

Before Hemant Gupta, J

PRABH DAYAL (DEAD) THROUGH HIS LRs,—Appellant

versus

DAULAT RAM,—Respondent

R.S.A. No. 25 of 1986

5th August, 2009

Limitation Act, 1963—Arts.64 & 65—Code of Civil Procedure, 1908—Allotment of stall by Military Estate Officer—Plaintiff claiming possession on basis of title—Defendant claiming to be in possession of stall since 1957—No evidence of allotment of stall to defendant by Military Estate Officer—In absence of any title derived by defendant, he can be said to be only in permissive possession—Plaintiff proving allotment in his favour by Military Estate Officer—Art. 65 of Limitation Act applicable as plaintiff claiming possession on basis of title—Appeal allowed, judgment and decree passed by Ist Appellate Court dismissing suit of plaintiff for possession set aside.

Held, that the plaintiff has proved allotment in his favour. There are communications on the record to the effect that the defendant was directed to hand over possession to the plaintiff. Therefore, between the parties, the plaintiff has a better title over the suit property as against the defendant who has none. Article 64 of the Limitation Act is applicable when the plaintiff claims possession only on the basis of previous possession, whereas Article 65 of the Limitation Act is applicable when the plaintiff claims possession on the basis of title. Since the title in the present case is allotment in favour of the plaintiff by the Military Estate Officer, therefore, it is Article 65 which is applicable in the present case. Therefore, the learned First Appellate Court has erred in law by dismissing the suit of the plaintiff for possession.

(Para 11)

L. M. Suri, Senior Advocate with Neeraj Khanna, Advocate, *for the appellant.*

HEMANT GUPTA, J.

(1) The plaintiff is in second appeal aggrieved against the judgment and decree passed by the learned Courts below whereby suit for possession of Stall No. 230 situated in Randhawan Market, Ambala Cantt. was dismissed.

(2) The plaintiff has sought possession of the aforesaid stall claiming himself to be a tenant under the Municipality Ambala Sadar and that the defendant has illegally occupied the same and is in unauthorized occupation thereof. In the written statement, the stand of the defendant was that the suit is barred by time as he is in possession for the last more than 20 years. It was asserted that the plaintiff is not a tenant in the stall in dispute nor he could be inducted as a tenant by the Municipality Ambala Sadar as the defendant is in occupation thereof in its own right as owner and as lessee of Union of India through Military Estate Officer, Ambala Circle, Ambala. It was also asserted that the defendant has legally occupied the stall in dispute and even otherwise the possession of the defendant in the stall in dispute is for the last more than 20 years and, thus, defendant has become owner of the property by way of adverse possession. In additional plea, it was pleaded that one Ram Lal was owner of plot in dispute who abandoned it in or about the year 1957 and thereafter the defendant occupied the same and is now continuing in possession thereof to the knowledge of the Union of India and to the knowledge of Ram Lal and his predecessor-in-interest.

(3) Keeping in view the respective pleadings of the parties, learned trial Court framed the following issues :---

1. Whether the plaintiff is entitled to the possession of the stall in question as alleged ?
 - 1(a) Whether the suit is within time ?
2. Whether the suit is bad for non-joinder of the parties ?
3. Whether the defendant is in adverse possession; if so, its effect ?
4. Relief.

(4) To prove the allotment of stall in favour of the plaintiff, the appellant produced letter dated 19th February, 1995, Exhibit P-6, issued by the Military Estate Officer to the plaintiff communicating transfer of Stall No. 230, Radhawa Market, Ambala Cantt. in favour of the plaintiff on the terms and conditions contained in the letter of Military Estate Officer, dated 11th February, 1975; Exhibit P-10, dated 12th April, 1979, a communication from the Municipality to the defendant, that the defendant is in unauthorized occupation of the said Stall and was directed to hand over the Stall to the plaintiff as the same is mutated in his name and he is paying lease rent to this Committee; and another letter Exhibit P-5, dated 16th December, 1976 written by the Military Estate Officer to the defendant for handing over the vacant possession of the Stall to the plaintiff. Similar letter Exhibit P-4, dated 17th January, 1977 is again written by the Military Estate Officer. In fact, Exhibit PW3 is the letter written by the defendant to the Military Estate Officer that he is in occupation of the stall for the last more than 12 years. The possession of the stall was handed over by Ram Lal (father of the appellant) and he sought allotment of stall. Exhibit PW3/2 is the assessment register recording factum of allotment in favour of plaintiff *vide* letter, dated 19th February, 1975.

(5) PW1 Sher Jang, Lower Division Clerk from the office of Military Estate Office, Ambala Circle, Ambala, has proved the letters mentioned above from the record of the Military Estate Office. PW2 Jai Bhagwan is Clerk of Municipality Ambala Sadar. He produced the record containing letter Exhibit P-10. The plaintiff has appeared as PW3 as his own witness. The defendant has examined DW1 Jai Bhagwan from the office of Municipal Committee, Ambala Cantt. However, he has not produced the summoned record. DW2 Ram Lal is neighbour of the defendant and occupant of Stall No. 227. He has deposed that the defendant is in possession of Stall No. 230 since 1965. DW4 Prem Singh, occupant of Stall No. 226, has deposed that the defendant is in possession of the stall since 1958. Defendant Daulat Ram appearing as DW1 as his own witness deposed that he is in possession of the stall for about 24 years and that the plaintiff has no relation with Ram Lal. He has deposed that he has not paid any rent to any person except Military Estate Officer and that he is in occupation of the stall as owner. He has not produced any receipt of payment of rent to the Military Estate Officer when asked to produce the same.

(6) On the basis of such evidence, learned trial Court returned a finding that the plaintiff is legal heir of Ram Lal and as such has *locus standi* to file the suit. It was found that the defendant has admitted in letter Exhibit PW3, dated 25th May, 1970 that he will hand over the possession to the relation of Ram Lal, therefore, he cannot travel beyond his admission. Exhibit XB shows that the defendant has not executed the lease deed and has not paid the arrears of ground rent. Thus, the defendant has not been able to prove himself as lessee in the stall in question. On Issue No. 3, the learned trial Court returned a finding that the defendant cannot claim adverse possession. However, under Issue No. 1(A), it was found that the suit was filed at belated stage after the expiry of six months from the date of dispossession and, therefore, it is time barred under section 6 of the Specific Relief Act, 1963. The argument of learned counsel for the plaintiff that the suit was filed within 12 years after 19th February, 1975 i.e., when the entitlement of the plaintiff was established, found to be untenable as the plaintiff has not filed suit for establishment of his title.

(7) In appeal, learned First Appellate Court found that the suit of the plaintiff-appellant is not under section 6 of the Specific Relief Act, 1963 and that the suit is governed by Article 64 of the Indian Limitation Act, 1963 based upon the previous possession and not on title. Since the period of limitation prescribed is 12 years, therefore, the suit filed in 1979 is after more than 12 years of dispossession as the evidence of the defendant shows that he was in possession for more than 12 years before the institution of the suit. Consequently, the appeal was dismissed.

(8) Initially, the defendant-respondent was represented by a counsel. On 27th April, 2009, actual date notice was ordered to be issued to the parties. In terms of Rule 8, Chapter 3, Part A of the Punjab and Haryana High Court Rules and Order, Volume V, it is deemed to be sufficient notice to the respondent.

(9) I have heard learned counsel for the appellant on the following substantial question of law :—

Whether the present suit for possession is governed by Article 64 of the Limitation Act, 1963 or Article 65 of the Limitation Act, 1963 ?

(10) The plaintiff-appellant has claimed possession on the basis of title i.e., allotment of stall by the Military Estate Officer. The title in the contest shall include the title as a lessee or allottee of the Military Estate Officer. In a suit of such nature, the issue is to be examined in view the dispute raised. On the one hand, the plaintiff claims possession being allottee of the Military Estate Officer, whereas the defendant claims adverse possession. The learned trial Court has returned a finding of fact that the plea of the defendant that he is in adverse possession is untenable. The defendant claims to be in possession since 1957. His stand is that he is ready to hand over the possession to the legal heirs of Ram Lal as is apparent from communication Exhibit PW3/3, dated 25th May, 1970. He has also stated that he is in possession under Military Estate Officer. In fact, he has sought allotment of stall. There is no evidence of allotment of stall to him. In the absence of any title derived by the defendant through Military Estate Officer or any other person, the defendant can be said to be only in permissive possession.

(11) On the other hand, the plaintiff has proved allotment in his favour. There are communications on the record to the effect that the defendant was directed to hand over possession to the plaintiff. Therefore, between the parties, the plaintiff has a better title over the suit property as against the defendant who has none. Article 64 of the Limitation Act is applicable when the plaintiff claims possession only on the basis of previous possession, whereas Article 65 of the Limitation Act is applicable when the plaintiff claims possession on the basis of title. Since the title in the present case is allotment in favour of the plaintiff by the Military Estate Officer, therefore, it is Article 65 which is applicable in the present case. Therefore, the learned First Appellate Court has erred in law by dismissing the suit of the plaintiff for possession.

(12) Consequently, present appeal is allowed and the impugned judgment and decree is set aside. The suit filed by the plaintiff-appellant is decreed with no order as to costs.