

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.2894 of 2009
Date of decision : 28.08.2015

Jagtar Singh & another

...Appellants

Versus

Nathu Ram and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Namit Gautam, Advocate for appellants.

Mr. J.S. Brar, Advocate for respondents.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the impugned judgments and decrees, whereby suit for partition seeking separate possession at the instance of co-owners i.e. successor-in-interest of Saudagar Singh has been dismissed.

Mr. Namit Gautam, learned counsel appearing on behalf of appellants submits that both the Courts below have committed illegality and perversity in dismissing the suit on the ground that khasra bearing No.467 was measuring 18 marlas, whereas the partition was sought on 10 marlas of land. He further submits that said finding is not only erroneous but perverse.

Both Teja Singh and Saudagar Singh were allottee of 10 marlas of land through conveyance deed dated 24.10.1991 Ex.P3/B and this fact has been reflected in the jamabandi and the mutation No.17834 has been entered into also. The conveyance deed prescribed the specific boundaries and, therefore, suit could not have been dismissed for want of non impleading of others co-owners who are alleged owned 8 marlas of land.

He further submits that following substantial questions of law arises to be determined by this Court:-

- “a) Whether in a suit for partition in respect of a residential property, the other co-owners of khasra (who have no right or interest in the property to be partitioned) are required to be impleaded as parties?
- b) Whether a tenant can claim adverse possession against its true owner?
- c) Whether a co-owner can claim adverse possession against another co-owner without pleading and proving ouster of other co-owner”

Mr. J.S. Brar, learned counsel appearing on behalf of respondents-defendants i.e. successor-in-interest of Teja Singh submits that respondents-defendants had set up a plea of adverse possession vis-a-vis the plaintiff and, therefore, the suit was ex facie time barred. He further submits that Courts below have rendered findings of fact on the basis of oral and documentary evidence and, therefore, there is no illegality and perversity.

There is categorical admission by the plaintiff in the cross-examination that Teja Singh was in possession of 2/3rd area since 1984. There is settlement dated 14.10.1991 between Teja Singh and Saudagar Singh Ex.D1 and by virtue of the said settlement, parties are living in their continuous and in separate possession, therefore, suit for partition is not

maintainable as partition had already been effected. He further submits that mutation is also of share and not in respect of specific area.

I have heard learned counsel for parties and appraised the paper book.

It is a matter of record that vide conveyance deed dated 24.10.1991, land measuring 10 marlas was allotted to Saudagar Singh & Teja Singh and same being reflected in jamabandi for the year 1995-96. In view of law laid down by Hon'ble Supreme Court, the defendants cannot set up a plea that defendants have become owner of the land by adverse possession owing to the law of prescription falls flat on the face, as suit had been filed in 1999, whereas adverse possession alleged to have been set up was from 1991. As conveyance deed was executed on 24.10.1991, therefore, it cannot be said to have been filed beyond the period of limitation.

No doubt even co-owner can set up a plea of adverse possession, he has to prove the ouster. No piece of evidence either oral or documentary have been lead in this regard. Ex.D1 cannot be looked into for reasons it requires registration as for the first time rights have been created, there was no pre-existing right in favour of Teja Singh and Saudagar Singh, therefore for want of registration, the documents could not be looked into and rightly so trial Court had rendered the findings in favour of the appellant-plaintiff. Even otherwise, said writing has not been reflected in the revenue record. The lis is between successor-in-interest of two brothers in respect of land measuring 10 marlas. In a suit for partition only preliminary decree has to be drawn, thereafter application is required to filed for preparation of the final decree.

In view of what has been observed, questions of law reproduced above are to be answered in favour of appellant-plaintiffs and against the respondents-defendants.

Accordingly appeal is allowed and suit is decreed.

Decree sheet be prepared accordingly.

28.08.2015

pawan

**(AMIT RAWAL)
JUDGE**