

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

RSA No.3191 of 2009 (O&M)
Date of decision : 18.08.2015

Khyali

...Appellant

Versus

Biru and ors.

...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. Jai Vir Yadav, Advocate for the appellant.

Mr. Ajay Jain, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the impugned judgment and decree dated 29.04.2009, whereby suit for declaration claiming ownership and correction in the revenue record filed at the instance of the appellant-plaintiff against the respondents-defendants, has been dismissed and the counter claim filed by the respondents-defendants has been decreed and they have been declared owner in joint possession of the suit land and further held entitled to the separate possession of the suit land by way of partition & the appeal filed against the same has also been dismissed.

Mr. Jai Vir Yadav, learned counsel appearing on behalf of appellant-plaintiff submits that both Bohtia and Teku who were having half share in the property were absentee landlord and Ganga Sahai and other co-owner, much less, his son Bahadur had become owner by way of adverse possession, and, therefore, they are entitled to the declaration of the ownership and correction in the entries of the revenue record. He further submits that both the Courts below have committed illegality and perversity in dismissing the suit and appeal, where umpteen number of oral and documentary evidence had proved on record otherwise. The present appeal raises substantial question of law, to be determined by this Court.

Mr. Ajay Jain, learned counsel appearing on behalf of respondents-defendants submits that admittedly Ganga Sahai and Teku & Bohtia are joint owners of the property in dispute. Mutation was challenged by Bohtia, but ultimately same was upheld, therefore, suit filed in November 1995 claiming adverse possession is not maintainable as they are not claiming any right or interest in the share of Ganga Sahai, which has rightly been mutated in favour of Ramdutt s/o Bohtia and is seeking ownership by way of decree suffered by Bohtia.

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

Admittedly, the suit has been filed on 18.11.1995 claiming the ownership on the basis of long settled interrupted possession. It is settled law that the suit for declaration claiming adverse possession is not maintainable. The mutation effected in the name of Ramdutt was as way back as on 08.08.1967, the same had attained finality in the year 1995, in

my view is the Act of greed claiming the share of Bohtia and Teku, which according to the plaintiff were absentee owners. There is no law claiming ownership of the property on premise of absentee landlord and co-owners can claim adverse possession unless and until setup a plea & prove of auster. No such evidence has been proved on record that Ramdutt had been ousted from possession.

Both the Courts below have rightly entertained the counter-claim granting decree of declaration to the defendants for joint possession and partition of the property.

There is no illegality and perversity in impugned judgment and decree, much less, no substantial questions of law arises for adjudication in the present appeal.

Accordingly, the present appeal is dismissed.

18.08.2015

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**(AMIT RAWAL)
JUDGE**