

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

RSA No.4075 of 2010 (O&M)

Date of decision : 17.11.2015

Sudesh Kumari

...Appellant

Versus

Jagdish Lal 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. G.K. Hundal, Advocate for
Mr. P.L. Singla, Advocate for the appellant.

Mr. Pritam Saini, Advocate for respondent Nos.1 to 3.

Mr. Sushil Bhardwaj, Advocate for LR of respondent No.7.

AMIT RAWAL, J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the judgment and decree of the lower Appellate Court, whereby judgment and decree of the trial Court, decreeing the suit, has been set aside.

The suit filed was for declaration and permanent injunction on the premise that they have become the owner by way of prescription owing to the long and settled possession. The defendants setup a plea by virtue of

the judgment & decree dated 11.09.1995 passed on the basis of compromise. The appellant-plaintiff had admitted the ownership of the defendants and, therefore, cannot be declared as owner by way of adverse possession.

Mr. G.K. Hundal, learned counsel appearing on behalf of appellant submits, that lower Appellate Court had erroneously reversed the finding of the trial Court on the premise that appellant-plaintiff has not been able to disclose the name of the child of the plaintiff who, had allegedly been, picked up by the defendants. The compromise dated 11.09.1995 was the outcome of the fraud and misrepresentation and thus, submits that there is illegality and perversity in the impugned judgment and decree passed by the lower Appellate Court, much less, substantial question of law arises for determination.

Mr. Pritam Saini, learned counsel appearing on behalf of respondent Nos.1 to 3 and Mr. Sushil Bhardwaj, learned counsel appearing on behalf of LR of respondent No.7 submits, that suit ex facie was not maintainable in view of the provision of Order 23 Rule 3-A as no separate suit would lie. The remedy if any for the appellant-plaintiff was to move an application for recalling of the order dated 11.09.1995 passed on the basis of the compromise. He further submits that suit claiming the ownership on the basis of the adverse possession is not maintainable. Even Hon'ble Supreme Court has now laid down the law in this regard and thus prays for dismissal of the appeal.

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

No doubt that the suit for declaration claiming the ownership on the basis of the adverse possession is not maintainable. In my view the trial Court has erroneously decreed the suit on this premise. The Lower Appellate Court reversed the findings which in my view is the correct finding that suit for declaration and permanent injunction was not maintainable. However, vis-a-vis relief of permanent injunction, the appellant-plaintiff has been able to prove the umpteen number of documentary evidence to show that they have been in long and in settled possession of the property and, therefore, cannot be dispossessed except in due course of law and, therefore, following substantial question of law arise for determination by this Court:-

- 1) Whether a person who is in long & settled possession of the property in dispute can be dispossessed except in due course of law or not?

I draw support from the ratio decidendi culled out by Hon'ble Supreme Court in *Rame Gowda (D) by LRs Vs. M. Varadappa Naidu (D) by LRs & another* 2004(1) SCC 769. The Lower Appellate Court in my view has not taken into consideration the aforementioned fact and ought not to have declined the relief of permanent injunction. In my view, the appellant-plaintiff is entitled to injunction and not declaration.

Accordingly, the judgment and decree of the lower Appellate Court is modified. The suit of the appellant-plaintiff vis-a-vis the permanent injunction, that she shall not be dispossessed at the hands of respondents-defendants or agents etc. except in due course of law, is hereby decreed.

Accordingly, the substantial question of law as noticed above is answered in favour of appellant-plaintiffs and against the respondents-

defendants.

In view of what has been noticed above, the present appeal is partly allowed. However, the judgment and decree of the lower Appellate Court vis-a-vis the declaration qua ownership is upheld.

17.11.2015

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**(AMIT RAWAL)
JUDGE**