

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

**RSA No.1252 of 2011(O&M)
Date of Decision: 12.05.2015**

Jagdish Ram

... Appellant

Versus

Pritam Singh & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Pritam Saini, Advocate,
for the appellant.

Mr. Gorakh Nath, Advocate,
for respondents No.1, 2, 3 (i) & 3 (iii).

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

This is defendant's second appeal having lost in both the Courts below. The suit was for retrieving possession on the ground that the defendant/appellant was a trespasser on the suit property and the plaintiffs claimed they were owners of it. Earlier to the present suit, the plaintiffs had filed a suit for simple injunction against the present respondents in which a finding was recorded that the defendant was a tenant. However, the plaintiffs abandoned the litigation and no further challenge was laid but since liberty was granted to the plaintiffs to file a fresh suit to regain possession, the present suit was brought on April 5, 2002, which has been decreed by both the Courts below.

The defence in the suit as projected in the written statement was that the defendant become owner of the corpus by way of adverse possession. But he did not claim any right over the corpus as tenant in the present suit. The plea of adverse possession has failed in both the lower

Courts and I have no reason to differ with those findings which are sound in law and not open to interference. However, Mr. Pritam Saini argues that the civil court had no jurisdiction to decide the case in view of the provisions of the Punjab Security of Land Tenures Act, 1953 ('the Act'), specifically pointing out to Sections 9, 77 and 100 of the Act which bar civil remedies. Thus, the suit was not maintainable and the remedy, if any, lay before the revenue authorities to seek eviction of the defendant.

While he argues on this point of want of jurisdiction of the civil court, Mr. Saini misses the point that his client did not take the defence of tenancy in the present suit and therefore, he had waived his rights, if any, as tenant and, hence the decision of this Court cited in aid by Mr Saini in **Kirpal v. Nathan (deceased LRs) and others**, AIR 1984 Punjab and Haryana 308, is of no help to him in urging that only the revenue court could entertain the *lis* between the parties. Though the appellant had a finding recorded in his favour in the earlier suit that he was a tenant in occupation of suit property, but he did not assert that right in defence of the present suit brought for regaining possession and chose instead to take only a plea of adverse possession to non-suit the plaintiffs by asserting that ownership rights had ripened by effluxion of time. If he claimed ownership over property by adverse possession then he tacitly gave up the claims based on tenancy and, therefore, the protection of their rights in adjudication before the revenue courts stood surrendered or waived despite the finding of the civil court in the previous suit for permanent injunction which is no longer tenable in the present context. The plea of adverse possession has failed in the courts *a quo* for lack of evidence and moreso by reason of the fatal plea of ownership by adverse possession taken in defence against a

plea of dispossession which is in antithesis of the plea of tenancy. The two pleas, I am afraid, cannot be seen to co-exist. The appellant is estopped from raising the plea of tenancy in the present suit in order to uproot it.

In this conspectus of facts it is held that the civil court was not divested of jurisdiction to decide the suit. Thus, the present appeal is devoid of merit and accordingly I find no question of law, much less a substantial one, arising in this appeal warranting admission in the limited jurisdiction in regular second appeal or for any further consideration as that would be a waste of time. Hence, the appeal is ordered to be dismissed in limine at the first opportunity available to court after four years of its pendency by adjournments motions sought time and again. The judgments and decrees of the lower courts are maintained. However, with no order as to costs since notice was not issued to the opposite party.

12.05.2015
monika

(RAJIV NARAIN RAINA)
JUDGE