

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2280 of 2011(O&M)

Date of decision: November 27, 2015

Sinder Pal Singh and others

..... Appellants

Versus

Jagdish Kumar and others

..... Respondents

CR No. 3978 of 2014 (O&M)

Jaspal Singh

..... Appellants

Versus

Jagdish Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. J. R. Mittal, Senior Advocate with
Mr. Kashmir Singh, Advocate
for the appellants in RSA No. 2280 of 2011.

Mr. Sudhir Nar, Advocate
for the petitioner in CR No. 3978 of 2014.

Mr. Tribhuwan Singla, Advocate
for the respondents.

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

Amit Rawal, J (oral).

This order of mine shall dispose of one Regular
Second Appeal and one Civil revision petition as both the cases
involve a common question of law.

The appellants-defendants are in Regular Second Appeal against the judgments and decrees of both the courts below whereby the suit for possession of land measuring 111 sq.yards comprising khasra No. 907//1/2 and 888 situated in the area of Village Sangrur as per jamabandi for the year 1984-85 and grant of mesne profits of ₹3600/- @ ₹300/- per month w.e.f. 17.2.1988, till 16.2.1989 has been decreed.

Mr. J. R. Mittal, learned Senior counsel assisted by Mr. Kashmir Singh, Advocate has raised the following submissions:-

- i) As per documentary evidence produced by the respondents-plaintiffs both the parties to the *lis* are co-sharers and in view of the judgment rendered in **Ram Chander Vs. Bhim Singh and others 2008 (3) RCR (Civil) 685** the suit for possession was not maintainable, remedy if any, lies elsewhere.
- ii) The appellants-defendants is not estopped to raise mutual destructive, pleas in claiming ownership by way of adverse possession as per the judgment in **Firm Siriniwas Ram Kumar Vs. Mahabir Prasad & others 1951 AIR (SC) 177**. In essence, mutual destructive pleas can be taken. Thus, prays that both the courts below have erred in not appreciating the aforementioned position of law and thus prays that substantial question of law arise for determination by this Court.

Learned counsel appearing on behalf of the respondents-plaintiffs submits that as per the demarcation report Ex. P-20 which is proved, through the testimony of PW-1 it has been found that there is encroachment on 111 sq.ft. Even the report also

bears khasra No.907/1/2.

He further submits that the appellants-defendants are prevented to take up the plea of co-sharers on the premise in the present appeal as no such plea has been taken in the written statement nor any evidence has been lead. Even Exs.DX, DY and DZ show that the parties are in possession of different khasra/khewats, therefore, they cannot be said to be co-sharers.

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

I have gone through the documentary evidence aforementioned and found that the parties are having separate khasras/khatonis/khewats, therefore, the ratio decidendi culled out in **Ram Chander's case (supra)** has no applicability to the facts and circumstances of the present case.

The appellants-defendants have failed to prove the ingredients of adverse possession, much less “Animus possidendi” as enunciated under Article 65 of the Limitation Act.

Assuming, that the appellants-defendants did not lead any evidence and the respondents-plaintiffs have to stand on their own legs, in my view the documentary evidence, particularly the demarcation report, it has been proved that the appellants-defendants are in illegal occupation of an area of 111 sq. ft.of khasra No. 907/1/2 and 888, Exs. DX, DY and DZ also show that parties to the *lis* are owners in possession of different khewats/khasra Nos.

There is another aspect of the matter, that during the pendency of the suit, respondents-plaintiffs sought amendment of

the plaint for removal of the construction as the appellants-defendants raised construction on the suit property. The plea that appellants-defendants are co-sharers with the respondents-plaintiffs is not substantiated as the written statement is wanting material/sufficient pleadings.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate court.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

The Civil revision petition No.3978 of 2014 is also dismissed.

(AMIT RAWAL)
JUDGE

November 27 , 2015
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