

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

RSA No.4250 of 2011(O&M)

Date of Decision: 16.07.2015

Rajesh & anr.

... Appellants

Versus

Shivdayal & ors.

... Respondents

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

Present: None.

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

RAJIV NARAIN RAINA, J.(Oral)

The appeal was dismissed in default of appearance after which the kind indulgence of this court was successfully sought on 28th November, 2014 when the order dated 7th March, 2013 was recalled, which had dismissed the appeal for non-prosecution. This is an appeal pending since the year 2011 without presenting an opportunity for the court to hear the case on merits to seek an admission of the matter. Today again, no one appears for the appellants. The process of the court has been abused by successive adjournments. No further indulgence can be shown to the appellants. It is assumed that the appellants are either not interested in prosecuting this appeal or they have nothing to urge. To keep the appeal floating like jetsam and flotsam by adjournment seekers and by their unexplained non-appearance, tends to lower the dignity and authority of the Court by making it look helpless when it is not to be taken for granted.

It may be noticed that the appeal was filed by the plaintiffs arising from a suit claiming a decree for declaration that they are owners in actual physical possession in equal share with co-owners in the suit property

falling within the *abadi deh* of the village. Their suit has been partly decreed by the trial court, on the finding that plaintiffs are in settled possession entitling them to protection of due process but the prayer for declaration of ownership has not been decreed for want of proof by evidence. The dispute in property was confined to a portion of open land measuring 3 Marlas of 'gher' falling betwixt the residence of the plaintiffs and the defendants situate in the *abadi deh* of the village. The courts below found no revenue record available on file to hold in favour of the plaintiffs that they were owners of the property even though they were held in possession of 5 Marlas of land for the last 12 years. But the plaintiffs mistakenly staked claim to title over suit land by way of adverse possession which they could not plead as it was a defence available only to the defendants. I have gone through the judgments of both the courts below and find nothing wrong in the findings of the trial Court and of the Court of first appeal in partially decreeing the suit. The claim based on ownership has been rightly denied.

For the foregoing reasons, I do not find any merit in this appeal. The same is, therefore, ordered to be dismissed as no substantial questions of law arise for consideration of this Court on its second appeal side.

16.07.2015
monika

(RAJIV NARAIN RAINA)
JUDGE