

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No. 2727 of 2012

Date of decision: 14.12.2015

Smt. Shanti and others

....APPELLANTS

VERSUS

Mam Raj

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Shiv Kumar, Advocate,
for the appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Senior Division), Faridabad dated 29.04.2011, whereby the suit for possession by way of mandatory injunction filed by the husband of appellant No. 1-plaintiff claiming himself to be the owner of the house measuring 100 Sq. Yards forming part of Khasra No. 16/3 (0-3), Rect. No. 24, situated within the revenue estate of Village Alipur, Tehsil Ballabgarh, District Faridabad, vide certificate of allotment dated 29.12.1976 Ex. P1, has been dismissed, appeal against which preferred by him has also been dismissed by the Additional District Judge, Faridabad on 12.02.2012.

2. It is the contention of the learned counsel for the appellants that the Courts below have proceeded to decide the suit primarily treating it as a declaratory suit whereas the suit is for the possession and for mandatory injunction. He contends that once the plea of adverse possession has been taken by the respondent, there is no dispute with regard to the property

being the same as was allotted to the appellants by certificate of allotment dated 29.12.1976 Ex. P1. Once the respondent is not disputing this aspect that the property is the same, the Courts could not have been proceeded to deny the benefit, as has been claimed by the appellants in the suit. He asserts that the findings, as recorded by the Courts below, cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellants but cannot accept the same for the reason that the assertion of the counsel for the appellants that the respondent has not denied that the plot is the same as was allotted vide Ex. P1 to the appellants-plaintiffs, is incorrect. Once the land has not been found to be the same in the light of the fact that the appellants-plaintiffs have failed to produce any evidence on identifying the land to be the same, on which the house constructed by Mam Raj-respondent-defendant is in existence, the findings, as recorded by the Courts below, cannot be faulted with. It may not be out of way to mention here that in the cross-examination, Budhu-the plaintiff (now deceased) and husband of appellant No. 1, his false assertion in the suit with regard to he having constructed the house after the allotment of the plot on 29.12.1976 within a period of two years from the date of said allotment, stands demolished where he has admitted that the respondent has raised construction over the plot by spending approximately ₹ 60,000-₹ 65,000/-. He has further admitted that the respondent and his family has been in actual physical possession of the house since 1952 and that he himself has never been in possession of the plot. He has gone to the extent of saying that he has never visited the house of the respondent-Mam Raj.

4. The evidence, which has been produced by the respondent,

amply proves his possession over the land and the house, which is in his possession. The construction over the house has also been proved on the basis of the evidence of Joginder Mistri DW2, who has stated that his father, namely, Dal Chand was a mason who has constructed the house.

5. In the light of the above, the findings, as recorded by the Courts below, cannot be faulted with. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

6. In view of the above, finding no merit in the present appeal, the same stands dismissed.

December 14, 2015

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**