

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

**RSA NO. 32 OF 2012 (O&M)
DECIDED ON : 16.07.2015**

Man Singh and another

...Appellants

versus

Om Parkash and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Sanjay Vashisth, Advocate.

K. C. PURI, J. (ORAL)

The defendant/appellant has directed this appeal against the judgment and decree dated 30.07.2011 passed by Shri M.M.Dhonchak, Additional District Judge, Bhiwani, vide which the appeal preferred by the defendant/appellant against the judgment and decree dated 20.03.2009 passed by Shri Pushpinder Kumar, Additional Civil Judge (Senior Division), Loharu, was dismissed.

Brief facts of the case as gathered from the records are that plaintiff/respondent filed suit for possession of the suit land and rendition of account from the year 2000 as mentioned in the head note of the plaint on the ground that the suit land was earlier owned and possessed by Hawa Singh, Rajbir both sons of Brij Lal and Surender Kumar @ Suresh Kumar son of Daya Ram.

Hawa Sing had sold the land measuring 10 kanal 0 Marlas to Om Prakash-plaintiff no.1 vide sale deed dated 19.02.1996 for consideration of ₹25,000/-. Rajbir and Surender Kumar @ Suresh Kumar had sold the land measuring 20 Kanals 0 Marlas to Parvati (now deceased)-plaintiff No.2 vide sale deed dated 24.11.1993. On the basis of said sale deeds, the mutations were sanctioned in their favour and they were owners of the suit land. The defendant filed civil suit in respect of suit land which was dismissed vide judgment and decree dated 21.12.1998. Appeal was also filed against the said judgment and decree, but the same was also dismissed vide judgment dated 04.03.2004 and the defendant was held to be in illegal possession of the suit land. Hence, the suit was filed.

Upon put to notice, defendant appeared and filed written statement taking preliminary objections regarding maintainability of suit; estoppel etc. It was admitted that the suit filed by her was dismissed but it was denied that in appeal it was held that her possession was illegal. The other averments were denied.

Replication was not filed. From the pleadings of parties, following issues were framed :-

- 1) Whether the plaintiffs are entitled to suit land as well as rendition of account on the grounds mentioned in the plaint ? OPP
- 2) Whether the suit is based on the false and frivolous grounds ? OPD

- 3) Whether the suit is not legally maintainable ?
OPD
- 4) Whether the plaintiffs are liable to be estopped from filing by her own act and conduct ? OPD
- 5) Relief.

In order to prove their case, plaintiff no.2 Om Prakash himself stepped into the witness box as PW-1 and placed certain documents on record.

On the other hand, the defendant herself stepped into the witness box as DW-1 and examined Krishan as DW-2, Suresh as DW-3 and closed the evidence.

The learned trial court, after adjudication, decreed the suit of the plaintiffs.

Feeling dissatisfied with the above said judgment and decree dated 20.03.2009 passed by Additional Civil Judge (Senior Division), Loharu, the defendant/appellants preferred first appeal. The said appeal was dismissed vide judgment and decree dated 30.07.2011 passed by Shri M.M.Dhonchak, Additional District Judge, Bhiwani.

Still feeling aggrieved with the above judgment and decree dated 20.03.2009 passed by Additional Civil Judge (Senior Division), Loharu and judgment and decree dated 30.07.2011 passed by Additional District Judge, Bhiwani, the appellants have

preferred the instant regular second appeal.

Learned counsel for the appellants, in para no. 9 of the grounds of appeal, has mentioned that following substantial questions of law have arisen in the instant appeal :-

- 1) Whether the learned courts below were expected to await the decision of the pending proceedings before the Hon'ble High Court ?
- 2) Whether nature of possession (authorized/unauthorized) has to be a necessary issue to be decided in the proceedings ?
- 3) Whether there is sufficient evidence for getting the appellants/defendants from the admitted possession held by them over the land in dispute?

Learned counsel for the appellants has submitted that the findings of both the courts below are the misreading and misinterpreting the evidence on file.

I have heard learned counsel for the appellants and have gone through the records of the case.

Although number of points have been mentioned in para no.9 of the ground of appeal but none of the point is available to the defendant/appellants. It is not disputed during the course of arguments that in earlier litigation, the defendant has been found to be in unauthorized possession. The plea of

adverse possession has not been raised nor the same is available to the defendant/appellant. The ownership of the plaintiff is not disputed during the course of arguments. The defendant is claiming to be in possession of the suit property as gair marusi tenant but in earlier litigation between the parties, it has been finally decided that she is not gair marusi tenant and is in unauthorized possession. The plea of adverse possession raised during the course of arguments is belied by the pleadings of the defendant herself. The tenant may be in possession of the property for years together but he cannot claim adverse possession.

The argument advanced by learned counsel for the appellants that appeal is pending before this court and as such, the appellant cannot be held to be in unauthorized possession, does not carries weight. The fact remains that in the earlier litigation, both the courts below have held that the defendant/appellants are in unauthorized possession. Otherwise also, the defendant has failed to prove that she has paid any rent at any occasion to the plaintiff and on that account also, she has failed to prove the factum of tenancy.

So in view of the above discussion, I have no hesitation in holding that no substantial question of law has arisen in the instant appeal. The defendant/appellants have failed to prove that the judgments of both the courts below are the result of misreading and misinterpreting the evidence on file.

Consequently, the appeal is without any merit and the same stands dismissed.

JULY 16, 2015
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(K. C. PURI)
JUDGE