

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3090 of 2013 (O&M)

Date of Decision.08.09.2015

Phool Singh and another

.....Appellants

Versus

Mishriya and others

.....Respondents

Present: Mr. Gopal Sharma, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. Delay of 260 days in refiling the appeal is condoned.
2. The defendants are the appellants before this Court. The suit was for recovery of possession of the property in Khasra No.15/2 and house raised construction thereon. The defendants' claim to the property was by virtue of a purchase by the defendants' father from the plaintiffs' brother Jugal Kishore on 28.07.1981. The plaintiffs filed a replication contesting the claim under the sale by pointing out to the fact that the plaintiffs had filed a suit in the year 1997 claiming that their brother had sold the property more than in excess of his entitlement and a compromise was entered into between the parties and a decree passed. The decree was passed on 16.11.1992 allowing for reversion of the property sold in excess and admitting to the plaintiffs' right to the property. The compromise decree was sought to be

amended by way of correction through an application No.13/6 of 1997 contending that the reference ought to have been of Khasra No.15/2 which was omitted to be done. This was contested by the defendants and an order was passed on 11.10.2003 that the correction ought to be made. This order became final between the parties. The suit was filed on the basis of the entitlement to the property of the plaintiffs and when the defendants' own plea to sustain the right to the property by virtue of the purchase failed on account of the subsequent event of compromise brought between the same parties and amendment to the compromise decree that admitted to the plaintiffs' status as the owners of Khasra No.15/2, there was nothing in favour of the defendants to sustain the retention of possession. The decree was consequently passed.

3. Learned counsel appearing on behalf of the appellants-defendants states that the defendants and their predecessors have been in possession of the property right from the year 1981 and they have also put up construction. The decree for recovery of possession could not have been granted. It was further contended that there was no plea at the time of the institution of the suit that the plaintiffs were entitled to the property by virtue of compromise. This was brought out only after the defendants filed the written statement.

4. Both these contentions are wrong and cannot be entertained. If there had been any construction made by the defendants' father and he could not been allowed to suffer the reversion of right to the plaintiffs, it must have been a point taken in defence at the time of institution of Civil Suit No.214 of 1992 and it cannot be brought at belated time now. Whatever defence that was possible, ought to have

been taken otherwise the defendants were barred by estoppel from setting up any claim against the compromise terms. Further if the compromise itself was amended specifically to refer to the suit property as property belonging to the plaintiffs, the objection regarding the defendants' construction and the plaintiffs' right to recover possession cannot be brought now. This again ought to have been done by assailing the order that was passed by the Court allowing for amendment on 11.10.2003. It must be noticed that the compromise itself is not the source of title for the plaintiffs. On the other hand, their contention was that the defendants' vendor Jugal Kishore had sold the property in excess of his entitlement and the compromise decree merely recorded the fact of the plaintiffs' entitlement as pre-existing before the sale was made by Jugal Kishore in favour of the defendants' father. Any construction made cannot have any value and the defendants will not be entitled to plead for any equities of what was not granted already at the time when the suit was decreed through a compromise and subsequently confirmed by an order dated 11.10.2003. The defendants cannot treat themselves to be in adverse holding because the continuity of holding was obstructed through the institution of suit in the year 1992 by Civil Suit No.214 of 1992 and if the present suit was filed again in the year 2003 which was subject of appeal filed in the year 2006, there have been continuous obstructions through Court proceedings and the defendants cannot hold out that they have perfected title to the property by adverse holding. The decree granted by two Courts below were perfectly in conformity with law and evidence and I find nothing substantial for intervention in the second appeal.

5. The second appeal is dismissed.

(K. KANNAN)
JUDGE

September 08, 2015
Pankaj*