

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2166 of 2015 (O&M)
Date of Decision: May 18, 2015

Som Nath

...Appellant

Versus

Jaswinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kapil Aggarwal, Advocate
 for the appellant.

INDERJIT SINGH, J.

Appellant-defendant Som Nath has filed this regular second appeal against Jaswinder Singh, Naib Singh, Gurjit Singh and Harinder Singh, respondents-plaintiffs and Jagdish and Pritam Ram proforma respondents, challenging the impugned judgment and decree dated 15.03.2013 passed by learned Addl. Civil Judge (Senior Division), Naraingarh, vide which the suit filed by plaintiffs for possession was decreed and also challenging the judgment and decree dated 31.03.2015 passed by learned District Judge, Ambala, vide which the appeal filed by Jagdish, Som Nath and Pritam Ram was dismissed.

The brief facts of the case are that plaintiffs filed a suit for possession by stating that father of the plaintiffs namely Sarwan Singh was owner in possession of the suit property, who died on 03.08.2004.

The mutation of inheritance of the suit land as well as other property was sanctioned in favour of the plaintiffs in equal shares. After the death of Sarwan Singh, plaintiffs are owners of the property in dispute and defendants have got no right, title or interest in the suit property. It is also stated in the plaint that about two months back, defendants forcibly and illegally constructed two rooms over the property in dispute and after coming to know about the illegal and unauthorized encroachment, plaintiffs got the land demarcated on 29.05.2005 and demarcation report shows that defendants have illegally and unauthorizedly encroached upon the portion of khasra No.14//31. The plaintiffs have prayed decree for possession as owner by demolition of construction as shown in the site plan.

Upon notice, defendants No.1 and 2 filed written statement by mainly stating that father of the plaintiffs namely Sarwan Singh was having good relations with Pritam Ram, father of the defendants. By way of verbal transaction, Sarwan Singh had taken amount of ₹15,000/- in the year 1983 and relinquished all the rights of the suit land comprising in khasra No.14//31(2-10) in favour of Pritam Ram and since then, Pritam Ram, father of defendants No.1 and 2 is using the same as owner and had constructed one house consisting of two rooms, one kitchen, one store, one bathroom, which has been constructed about 20 years back and defendant No.1 is running Karyana shop. It is also stated in the written statement that Sarwan Singh offered to sell the suit land to Pritam Ram for an amount of ₹15,000/- and Pritam Ram gave the amount in the year 1983 to

Sarwan Singh and Sarwan Singh handed over the possession of the suit property to Pritam Ram.

Both the parties produced evidence. Learned Addl. Civil Judge (Senior Division) Naraingarh, vide judgment and decree dated 15.03.2013 decreed the suit of the plaintiff after appreciating the evidence. Against above-said judgment, an appeal was filed by Jagdish, Som Nath (present appellant) and Pritam Ram, which was also dismissed by learned District Judge, Ambala vide judgment and decree dated 31.03.2015.

At the time of arguments, learned counsel for the appellant argued as per the version given in the written statement and stated that both the Courts below have not appreciated the evidence properly.

After hearing learned counsel for the appellant and after going through the record, first of all, I find that concurrent findings have been given by the Courts below after appreciating the evidence in right perspective. There is nothing on the record to show that the evidence has been misread by the Courts below. Nothing has been pointed out as to what substantial question of law arises in this appeal. Admittedly, the defendants have not taken the plea of adverse possession. The defendants are alleging ownership on the basis of some oral transaction. There is no documentary evidence on record to prove that oral transaction. Admittedly, the plaintiffs' predecessor namely Sarwan Singh was owner of the property in dispute and demarcation has been got conducted, which has also

been proved on the record and defendants are found in possession over the suit property and they have raised the construction. The only dispute in the present case is as to who is the owner of the suit property. Admittedly, Sarwan Singh was owner of the property and as per the plaintiffs, they have inherited the property from Sarwan Singh. The defendants' version regarding oral transaction of sale by Sarwan Singh for ₹15,000/- cannot be believed. First of all, this property is of value of more than ₹100/- and it can only be transferred by a registered document. There is no registered sale deed in favour of the defendants.

As already discussed, the defendants have also not taken the plea of adverse possession. Therefore, the defendants are not the owners of the property in dispute. Moreover, even regarding oral transaction, there are no particulars as to on which date and month this oral transaction took place and in whose presence.

In view of the above discussion, I find that the findings given by the Courts below are correct, as per law and do not require any interference from this Court and the same are upheld. No substantial question of law arises in this present appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

May 18, 2015
Vgulati

(INDERJIT SINGH)
JUDGE