

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

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**R.S.A No. 45 of 2015 (O&M)
Decided on : January 08, 2015**

Shiv Charan (deceased) through LRs ... Appellant

Versus

Ram Kishan & Ors. ... Respondents

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. J.S.Hooda, Advocate, for the appellant.

Mahavir S. Chauhan, J. (Oral)

By way of this regular second appeal Shiv Charan through his legal representatives, assails judgment/decreed dated 05.03.2014, whereby the learned Additional District Judge, Palwal ('first appellate Court' – for short) has affirmed judgment/decreed dated 20.10.2011 of the Court of learned Additional Civil Judge (Senior Division), Palwal ('trial Court' – for short), whereby the suit for possession by ejectment of the defendants from the suit properties has been decreed.

Case of the plaintiffs before the learned trial Court was that the suit properties were purchased by their predecessors in interest namely Hari Nath and Prem Nath from their original owners and the defendants were inducted as licencees in respect thereof in the year 1978 as defendants are related to the plaintiffs and had no place to live in. However, the defendants

instead of vacating the suit properties attempted to alienate the plaintiffs' properties by projecting themselves as owners thereof, which prompted the plaintiffs to revoke their licence and seek possession of the same.

In the written statement filed on behalf of the defendants, besides pleading a few preliminary objections, it was stated that fore-fathers of the plaintiffs were not residents of the village and as such there was no question of any ancestral property being held by them. According to plea of the defendants in the written statement the properties in dispute (mentioned in para 1 of the plaint) were purchased by grandfather of defendants No. 1 and 2 for a sum of Rs.99/- in the year 1942 and they continued to be owners in possession thereof as successors in interest of their fore-fathers.

From the pleadings of the parties, learned trial Court formulated relevant issues. Parties adduced evidence and were heard by the learned trial Court. Having reached the conclusion that the plaintiffs were able to prove their case learned trial Court decreed the suit vide judgment/decreed dated 20.10.2011, which was assailed by the defendants in civil appeal (No. RBT-103/2011-12) but, as aforesaid appeal has been dismissed by the learned first appellate Court vide judgment/decreed dated 05.03.2014.

Though, the appeal is barred by time as regards filing/re-filing, but I have heard learned counsel for the appellant on merits.

Though, it is vehemently argued by learned counsel for the appellant that the defendants have inherited the suit properties from their fore-fathers who had purchased it from the original owners and case put up

on behalf of the plaintiffs is patently false, but it comes out from the record that the properties in suit were purchased by fore-fathers of the plaintiffs vide sale deed dated 11.09.1941 (Hindi translation Exhibit P/2) for a consideration of Rs.20/- and possession of the suit properties was delivered to them at the time of purchase. The defendants (including appellant) though claim to have inherited the suit property from their fore-fathers, who according to them had purchased it from the original owners, but they have failed to bring on record any evidence, whatsoever, to show that the properties in dispute were so purchased by their fore-fathers. As rightly noted by the Courts below they have not been able to bring on record any receipt of house tax, chullah tax or electricity/water bills etc., to prove their ownership over the suit property. No one has come forward to support the plea of the defendants regarding ownership of the suit property. On the other hand, plaintiffs have examined Badlu Ram, Lamberdar as PW-1, Dauji as PW-2 besides one of them namely, Ram Kishan as PW-3 and examined Sukhi Ram Record Keeper as PW-4 and Megh Shyam Draftsman as PW-5 to prove their ownership over the suit properties as also their plea that defendants were inducted as licencees therein.

At this stage, learned counsel for the appellant argues that the defendants are continuing in joint peaceful and hostile possession of the suit property for more than 12 years and as such their possession has ripened into ownership by way of adverse possession. The plea, in my view, is not available to the defendants in view of the proven fact that their possession over the suit properties was permissive, in view of the fact that they were

inducted as licencees in respect thereof.

In view of the above, coupled with the fact that the appeal is found to involve no substantial question of law, I am not inclined to interfere with the concurrent findings of fact recorded by the Courts below.

The appeal, therefore, fails and is dismissed.

No costs.

January 08, 2015
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[Mahavir S. Chauhan]
Judge