

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 2098 of 2014(O&M)

Date of decision :February 26, 2015

Karnail Singh (deceased) through L.Rs and others

..... Appellants

Versus

Charanjit Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R. K. Verma, Advocate
for the appellants.

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?

Amit Rawal, J (oral).
CM No.5111-C of 2014

This is an application under Section 151 CPC seeking condonation of delay in refiling the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 55 days in refiling the appeal is condoned.

The application stands disposed of.

RSA No. 2098 of 2014(O&M)

This Regular Second Appeal at the instance of the appellants-defendants is directed against the concurrent finding of fact rendered by both the courts below whereby the suit of the respondent-plaintiff for seeking possession of land measuring 5 Marlas has been decreed by both the courts below.

Mr. R. K. Verma, learned counsel appearing on

behalf of the appellants-defendants in support of his grounds of appeal submits that both the courts have committed illegality and perversity in decreeing the suit and dismissing the appeal filed on behalf of the appellants when there was umpteen number of documents to prove on record that the appellants-defendants were co-sharers in the property therefore remedy for them was to initiate proceedings of partition and not to file suit. In support of his submissions he has relied on the judgments in **Sarla Kumari Vs. Santosh Kumari 1997(1) Civil Court Cases 168 (P&H), Mohinder Singh Vs. Palwinder Singh and others 2010 (Suppl.) CCC 238 (P&H) and Balwinder Singh Vs. Gurcharan Singh and others 2010 (4) CCC 005(P&H).**

He further submits that since the appellants-defendants in the written statement had taken a plea of adverse possession but the trial court did not frame issue qua adverse possession therefore the present appeal involves a substantial question of law to be adjudicated by this Court. He further submits that both the courts below discarded the fact that inconsistent and mutually destructive pleadings can be taken as there is no bar to such pleadings.

I have heard learned counsel appearing on behalf of the appellants-defendants, appraised the impugned judgments and decrees of both the courts below with their able assistance and am of the view that the present appeal is devoid of merits and is liable to be dismissed for the following reasons.

From the reading of the stand taken in the written

statement the appellants-defendants admitted that they have taken forcible possession of land measuring 5 Marlas on 25.5.1971 whereas on the contrary, respondent-plaintiff had alleged that defendants had taken forcible possession and occupied the premises on 15.4.1999. The sale deed Ex. D-1 pertained to the area measuring 12 Kanals 18 Marlas.

The appellants-defendants have taken up a plea that they are in adverse possession and they are in continuous, uninterrupted possession since 25.5.1971. It is a settled law that once the plea of adverse possession is set up the title of other party is admitted. No doubt the appellants-defendants stated to have purchased the land measuring 12 Kanals 18 Marlas from the father of the respondent-plaintiff vide sale deed dated 25.5.1971 Ex. D-1. The aforementioned land is comprised in khasra No.347 (3-2), 519 (8-0). It has come on record that appellants-defendants have purchased land measuring 1 Kanal 16 Marlas out of land comprised in khasra No.348 (2-0) consisting of 2 Kanals but the fact remains that their own inconsistent stand in the written statement was that despite purchasing the aforementioned property they had taken forcible possession of the suit land measuring 5 Marlas and also attempted to lead evidence on record to show that they are in continuous and uninterrupted possession since the date of purchase of the land. It is a settled law that where the parties are alive to their respective pleadings and lead evidence, and even then that issue has not been framed and adduced to evidence, it would not be open to a party to raise argument or plea that proper

issues have not been confirmed. Reference is invited to the judgment in **Swamy Atmananda and others Vs. Ramkrishna Tapovanam, 2005 (3) RCR (Civil) 404**. In the instant case the appellants-defendants made a faint attempt to lead evidence to prove adverse possession but did not bring on record any cogent evidence in support of the said argument. Rather the defendants have failed to prove that Dewa Singh-father of the plaintiff from the beginning was aware that the defendants are/were in possession of the suit property measuring 5 Marlas owned by him.

There is no dispute with the proposition of law laid down in the judgments cited by Mr. R. K. Verma, learned counsel appearing on behalf of the appellants-defendants that no injunction can be granted in favour of the co-sharer where he is in joint possession of the land and in the absence of exclusive possession, remedy, if any is to seek partition but here in the instant case the facts and evidence do not prove on record that the appellants-defendants were co-sharers. There is a categorical admission in the written statement that they took forcible possession of the land measuring 5 Marals therefore the suit at the behest of the respondent-plaintiff to seek possession from the alleged dispossession and occupied by the appellants-defendants is maintainable.

In view of what has been observed above, the appeal is liable to be dismissed. Both the Courts below have rendered a finding of fact and law after appreciation of oral and documentary evidence. I do not find any illegality or perversity in the

aforementioned judgments and decrees of the courts below.

No substantial question of law arise for determination by this Court.

No other argument has been raised.

Accordingly, the appeal is dismissed. There is no order as to costs.

(AMIT RAWAL)
JUDGE

February 26 , 2015
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