

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No. 5483 of 2015 (O&M)

DATE OF DECISION : October 12, 2015

Gurbachan Singh

..... APPELLANT(S)

VERSUS

Gurdarshan Singh

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. S.K. Chawla, Advocate, for the appellant.

...

1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO
2. To be referred to the Reporter or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

...

ARUN PALLI, J. (Oral)

Suit filed by the plaintiff was decreed by the trial court, vide judgment and decree dated 11.03.2013. As the appeal preferred against the said decree failed and was dismissed, vide judgment dated 29.01.2015, defendant is before this court, in the instant Regular Second Appeal. Parties to the lis, hereinafter, will be referred to by their original positions in the

suit.

Plaintiff played for a decree for possession, on the basis of title, of land measuring 26 Kanals 17 Marlas, comprised in Khasra numbers depicted in the plaint. It was maintained that the defendant was in illegal and unlawful possession of the suit property. It was further maintained that earlier defendant-Gurbachan Singh had filed a Civil Suit No. 818 of 18.01.1994, decided on 18.02.2003, vide which he had prayed for a declaration that he had become owner in possession of the suit land by prescription. However, the said suit was dismissed. Even an appeal preferred against the said decree was dismissed by the 1st Appellate Court, vide judgment dated 21.05.2008. As defendant was in illegal and unlawful possession, thus, the suit.

In defence, it was pleaded, inter alia, that the suit filed by plaintiff was barred by time. It was maintained that the possession of the defendant over the suit property was open, notorious and hostile. And since an ejectment order dated 23.01.1975, was passed against the defendant by the Assistant Collector IInd Grade, Zira, and affirmed by the Collector, vide order dated 22.05.1975, and even by the Commissioner, vide order dated 02.04.1979, possession of the defendant was no longer permissive over the suit property. The relationship of landlord and tenant, if any, had come to an end between the parties. Defendant had, thus, become the owner by way of adverse possession.

On a due and comprehensive consideration of the matter in issue and the evidence on record, the courts below

concurrently concluded that the suit in hand was governed by the provisions of Article 65 of the Indian Limitation Act, 1908, and for the plaintiff to succeed, he was only required to show his title. That being so, defendant could only defeat the relief being reclaimed by the plaintiff by showing that he, indeed, had become owner of the suit property by way of adverse possession. In the Jamabandi, Exhibit P7, plaintiff was duly recorded to be the owner of the suit property and defendant was shown to be in cultivating possession as a lessee. So was the position reflected in the subsequent entries in the record of rights. Vide judgment dated 18.02.2003, plaintiff Gurdarshan Singh was held to be the owner of the suit property and, consequently, the relief of injunction claimed by the defendant, who was a plaintiff in the said suit, was declined. The said decree was affirmed in an appeal and the same has since become final between the parties. So much so, defendant conceded in his cross examination that the suit land measuring 26 Kanals 17 Marlas was sold by Khemi in favour of the plaintiff. Concededly, the order of ejectment passed by the revenue court against the defendant on 23.01.1975 was affirmed right up to the Financial Commissioner (Appeals), Punjab, vide order dated 27.02.1986. Since the plaintiff had proved himself to be the owner of the suit property, and defendant had failed to substantiate his plea that he had acquired titled by prescription, the decree for possession was rightly granted in favour of the plaintiff. Particularly, when he had already been ordered to be ejected by the revenue court, vide order dated 23.01.1975 and

the same has since become final.

Learned counsel for the appellant could not point out as to how the conclusions that have concurrently been recorded by both the Courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed. No question of law, much less any substantial question of law, arises for consideration. The same being devoid of merit is, accordingly, dismissed.

OCTOBER 12, 2015
Kang

(ARUN PALLI)
JUDGE