

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 4977 of 2014(O&M)
Date of decision : August 19, 2015

The State of Haryana and another

..... Appellant

Versus

**S. B. Sardar Balwant Singh Technical and Scientific Education
Society, (regd.)Karnal**

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ravi Partap, AAG., Haryana
for the appellants.

Mr. Anil Kshetarpal, Senior Advocate with
Mr. Maninder Singh Saini, Advocate
for respondent No.1.

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).

The challenge in the present appeal is to the judgment and decree of the appellate court whereby the appeal filed by the respondent against the judgment and decree of trial court for possession of the land described in the head note of the suit has been accepted.

Mr. Ravi Partap, AAG., Haryana, submits that the appellate court has committed illegality and perversity in not appreciating the fact that respondent-plaintiff had at earlier point of time filed a suit Ex. D-3 titled as Technical & Education Society Vs.

Gram Panchayat Jundla vide Ex. D-5 which was dismissed on 7.8.1995 but the factum of dismissal has not been disclosed in the present suit and therefore, the suit was hit by Order 2 Rule 2 CPC.

There are umpteen documentary evidence, on record, that the appellant-State had become owner by way of adverse possession. In essence, animus possidendi has been proved as it was in the knowledge of the respondent-plaintiff that State was in continuous possession and failed to take any steps, in seeking possession therefore, as per provisions of Article 1963 of the Limitation Act, 2005 the appellant-defendant has become owner by way of adverse possession.

Mr. Anil Kshetarpal, Senior Advocate assisted by Mr. Maninder Singh Saini, Advocate appearing on behalf of respondent No.1. Submits that plea of adverse possession, as per latest law, on behalf of State cannot be set up. In support of his contentions he relied on the judgment of Hon'ble Supreme Court in **State of Haryana Vs. Mukesh Kumar and others (2011) 10 SCC 404**. Even otherwise the previous suit was sought for injunction against the Gram Panchayat, whereas, the present suit has been filed against the State and therefore the provisions of Order 2 Rule 2 are not attracted.

I have heard learned counsel for the parties and appraised the paper book with their able assistance.

It is now settled, i.e. in view of the ratio decidendi culled out by Hon'ble the Supreme Court in the judgment cited (**supra**), the State cannot set up a defence of adverse possession.

Even otherwise, appellant-defendant has not been able to prove on record the alleged un-interrupted and continuous possession which was in the knowledge of the whole world as well as respondent-plaintiff. The previous suit was filed against the Gram Panchayat and not against the State and the instant suit for possession is against the State, therefore, rigour of Order 2 Rule 2 would not come in the way of respondent-plaintiff for seeking possession of the property,

In view of what has been observed above, the appellate court has 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 judgment and decree of the courts below.

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

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

August 19 , 2015
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