

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

RSA No.786 of 1988 (O&M)

Date of decision : 14.12.2016

Fattu Ram (deceased) through LRs

...Appellants

Versus

Lal Chand and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Rakesh Chopra, Advocate for the appellants.

Mr. S.S. Swaich, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

The appellants-defendants being LR's of Fattu and others are in Regular Second Appeal against the judgment and decree rendered by the lower Appellate Court, whereby suit seeking partition of the two properties i.e. residential house and *tabela*, has been decreed by the lower Appellate Court.

Mr. Rakesh Chopra, learned counsel appearing on behalf of appellants-defendants submits that categorical stand/averment in the plaint was that the property was ancestral at the hands of Norata Ram and on his demise, had fallen to all the children i.e. parties to the lis but the plaintiffs have failed to prove on record the ownership of Norata Ram and thus, property could not be said to be joint on the demise of Norata Ram and

could not have succeed by natural succession. Onus is heavily upon the plaintiff. Plaintiff placed on record one copy of the sale deed Ex.PW4/A in rebuttal in respect of a property adjoining to the residential house whereas the assessment register notices issued by the Municipal Committee regarding the assessment shown to be in favour of Fattu and, therefore, conclusion drawn that property was of Fattu and not of Norata Ram and is erroneous qua jointness. As regards *tabela*, he submits that no documentary evidence has been placed on record to prove the ownership and document of title was marked and in the absence of the same, the Trial Court dismissed the suit. However, lower appellate Court has committed illegality and perversity in decreeing the suit, in toto. The plea of adverse possession was secondary and not primary and can always be withdrawn, much less, Courts below have also non-suited on this ground but it would not tantamount to admission of title as onus heavily relies on the plaintiff, thus, there is gross illegality and perversity. The lower Appellate Court has taken into consideration the document Mark-A by putting a blame on the trial Court that it should have been exhibited being 30 years old. Such a finding is neither here nor there and is liable to be set aside.

Per Contra, Mr. S.S. Swaich, learned counsel appearing on behalf of respondents-plaintiff submits that taking up a plea of adverse possession itself is a admission of title, much less, jointness and, therefore, no occasion arose for the plaintiff to prove the nature and character of the property, much less, title. Issues are framed only where parties are at variance. Since title was not in dispute, therefore, no evidence in this regard was led but yet as regards the plot/*tabela*, the documentary evidence, which

was erroneously marked as Mark-A, has rightly been held to be exhibited by the lower Appellate Court as the sale deed is dated 13.07.1931 more than 30 years old and was permissible as per the provision of Section 90 of the Indian Evidence Act. The assessment register, in view of the settled law, cannot be considered document of title. Having failed to prove the same, property has rightly been held to be joint and, therefore, consequential relief of preliminary decree passed and thus urges this Court for affirming the same.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Mr. Chopra, for, taking up the plea of adverse possession though it is secondary, tantamounts to the admission of the title. Parties ascertaining the jointness would not be able to lead the evidence once there is admission. Legislature in the wisdom incorporated the provisions of Code of Civil Procedure, to create the obligation upon the trial Court called upon the parties for admission and denial of the document before proceeding to the trial, in essence, the whole idea is to curtail the litigation and give opportunities to the parties to lead evidence on which they are at variance. Assessment register is not a document of title, in view of law laid down by this Court in *Raj Kumar Vs. Hardit Singh (deceased) represented by his Lrs* 1993(3) PLR 364.

I am in agreement with the findings rendered by the lower Appellate Court that the documents of title qua plot being more than 30 years old can be looked into, as it was not a Will, but a document of title therefore, provision of Section 90 of the Act would squarely be applicable. Sale deed Ex.PW4/A is though according to Mr. Chopra, is of adjoining

property but the identity of the property has not been established. I would not delve upon the same but the fact remains that Norata Ram had a property at his disposal and the plaintiffs are none else but are the siblings. All these grounds have been taken into consideration by decreeing the suit.

I do not intend to differ with the same.

There is no force in the submission of Mr. Chopra, regarding the impleadment of sister as no documentary evidence for impleading the sister has been placed on record, much less, no other evidence has been led in this regard by taking the aid of the provisions of Indian Evidence Act.

Resultantly, present appeal is dismissed.

Interim order dated 09.06.1989 stands vacated.

There is application under Order 41 Rule 27 CPC filed at the instance of the appellant seeking leave of this Court to place on record judgment and decree decided on 14 Baisakh 1991, whereby Tara Singh has challenged the sale deed of 1/6th share of *tabela* in favour of Norata Ram and the said suit was decreed.

Since it is not certified copy, the authenticity and genuinity is therefore not prima facie established, therefore, consequential relief of sale deed would be thus meaningless.

Resultantly, present application is also dismissed.

14.12.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No