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

RSA-453-1990 (O&M)

Date of decision : 09.11.2016

Sarwan Kumar (deceased) through LRs

... Appellant

Versus

Kanahiya Lal (deceased through LRs)

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Mani Ram Verma, Advocate
for the appellant(s).

Mr. A.C. Jain, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

CM-625-C-1990

Prayer in this application filed under Order 41 Rule 27 read
with Section 151 of the Code of Civil Procedure for additional evidence.

Learned counsel for the applicant/appellant prays for
withdrawal of the present application.

Ordered accordingly.

RSA-453-1990 (O&M)

The appellant-plaintiff is aggrieved of the judgment and decree
rendered by the lower Appellate Court, whereby the suit for possession of
the suit property shown in the site plan (Ex.P-1) appended with the plaint
and marked by letters A, B, C, D, has been dismissed, in essence, the
judgment and decree of the trial Court has been set aside.

Mr. Mani Ram Verma, learned counsel appearing on behalf of

the appellant-plaintiff submits that the suit aforementioned was filed on the premise that the house was owned by his father Sohan Lal and after his death, the plaintiff had stepped into his shoes. Since the plaintiff was staying away and had kept his articles in some of the rooms and the certain rooms were kept vacant. The defendant, who is none-else but the cousin of the plaintiff, unauthorisedly occupied the aforementioned property. The trial Court on the basis of the oral and documentary evidence decreed the suit by declining the prayer of the defendant qua setting up of the title by way of adverse possession but the lower Appellate Court has abdicated in reversing the finding which is neither the case of the parties by holding that the identity of the property is in dispute.

He further submits that once the defendant had admitted the possession, the ownership is also proved, much less, identity. There was no occasion for the lower Appellate Court to have been embarked upon the path which is neither the case of the plaintiff, thus, urges this Court for setting aside the judgment and decree under challenge as there is a gross illegality and perversity.

Mr. A.C. Jain, learned counsel appearing on behalf of the respondent-defendant submits that the respondent-defendant had been in continues, long, uninterrupted and peaceful possession to the knowledge of whole world and therefore, under the provisions of Article 65 of the Limitation Act, had become owner by law of prescription. Though the trial Court did not accept the aforementioned fact but the lower Appellate Court dismissed the suit on the ground of identity of the property as the description given in the sale deed did not tally with the site plan, even the witnesses of the plaintiff have not been able to give the description, thus,

urges this Court for affirming the judgment and decree under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a force and substance in the submissions of Mr. Mani Ram Verma, for, once the defendant has taken up the plea of adverse possession and having acquired the ownership by way of prescription, the identity of the house cannot be said to be in dispute, much less, the ownership, despite the plaintiff proved the sale deed dated 26.01.1931 (Ex.P-5). Over a period of time, the boundaries given in the sale deed and at the time of filing of the suit keep on fluctuating. This aspect has not been taken care of by the lower Appellate Court. The lower Appellate Court ought to have examined the fact that once there is no dispute with regard to the identity, the plea of adverse possession had been taken, in essence, identity of the property, thus, cannot be said to be in dispute, it should not have embarked upon the area of surmises and conjectures by non-suiting the appellant-plaintiff.

During the pendency of the appeal, an application for interim stay was filed and this Court by noticing the contentions of the parties passed the following order:-

“Mr. Garg learned counsel for the respondents states at the bar that in the event the appeal succeeds, the appellant will give possession of the property with the improvements and his client will not claim any compensation for the improvements made. Learned counsel further states that his client does not want to alienate the property in any manner and if he wants to transfer it, he will do so with the permission of the Court. In view of this undertaking, the application has been rendered infructuous and is dismissed as such”.

Whereby the counsel for the respondent-defendant had

undertaken to hand over the possession of the property with the improvements without claiming any compensation in case the appeal is allowed.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213”**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure, so there is need to frame the substantial questions of law or not. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **“Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others” 2001(4) SCC 262**, on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi 's case** (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29] ”*

27. *Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”*

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the foregoing reasons, the judgment and decree of the lower Appellate Court is not sustainable and the same is hereby set aside and that of the trial Court is restored. The suit of the appellant-plaintiff is decreed.

The respondent-defendant is directed to handover the possession of the property in terms of the undertaking reflected in the aforementioned order within a period of three months from the date of the receipt of the certified copy of this order.

RSA stands allowed.

09.11.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No