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

RSA-965-1996

Date of decision : 06.04.2016

Wirsa Singh and others

... Appellants

Versus

Ujjagar Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Varun Parkash, Advocate
for the appellants.

Mr. Ayush Gupta, Advocate
for the respondent.

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 appellants-plaintiffs are aggrieved of the findings rendered by the lower Appellate Court dismissing the suit by reversing the finding on Issue No.1 and on remaining issues held that the respondent-defendant has not been able to prove the adverse possession.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Varun Parkash, learned counsel appearing on behalf of the appellants submits that the appellants-plaintiffs purchased the land measuring 35 kanals 5 marlas vide registered sale deed dated 31.05.1984, the mutation in this regard was effected and the suit was filed for claiming the possession. The respondent-defendant set up a plea of adverse possession. The trial Court on the basis of the oral and documentary evidence, found that the respondent-defendant failed to prove the

ingredients of the adverse possession i.e. notoriety and *animus possidendi*, knowledge to the whole world including the appellants-plaintiffs. However, in an appeal preferred by the respondent-defendant, the lower Appellate Court reversed the finding on Issue No.1 by holding that the sale deed Ex.P1, though has been proved through the testimony of one of the attesting witnesses, namely, Utam Singh, Lumberdar, but did not specify the share, whereas Anita Kumar was the co-owner, in essence, the sale deed mentioned about selling of the entire joint khata. He further submits that said findings are totally erroneous as no other co-owner has come forward to challenge the same. Even otherwise, as per the jamabandi Ex.P-5, it has been proved that the property has been mutated in favour of Anita of her share only and not with regard to the entire share of other co-owners. Thus, finding is totally perverse and erroneous and urges this Court to formulate the following substantial questions of law arise for determination of the appeal;

1. Whether the judgment and decree of the lower Appellate Court rendering the finding on issue No.1 against the appellant-plaintiff is sustainable in the eyes of law.
2. Whether the judgment and decree of the lower Appellate Court on issue No.1 tantamounts to misreading and misappreciation of the oral and documentary evidence on record.

Mr. Ayush Gupta, learned counsel appearing on behalf of the respondent-defendant submits that no doubt the defendants have not filed any cross objection, but the plaintiff has failed to discharge the onus viz-a-viz the ownership and in the absence of the ownership, could not seek the possession. There is no illegality and perversity in the finding rendered by the lower

Appellate Court on issue No.1 and urges this Court for affirmation of the finding rendered by the lower Appellate Court.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is force in the submission of Mr. Arun Jain, for the reason that the Jamabandi for the year 1988-89 (Ex.D-5) which after registered deed dated 31.05.1984, shows the entry of the erstwhile owner and as well as the appellant as per their respective share, therefore, the finding rendered by the lower Appellate Court that the sale deed executed by Anita Kumar in favour of the appellants-plaintiffs in respect of the entire *khata* is wholly misplaced, much less, erroneous. There is a gross misreading of the documentary evidence on record and such finding, in my view, is not sustainable. The sale deed has been proved through the testimony of one of the attesting witnesses, namely, Utam Singh, Lumberdar. Moreover, the plea of adverse possession tantamounts to admitting the ownership of the appellants-plaintiffs, the lower Appellate Court is not enjoined upon to go into such detail, in view of such legal position.

Keeping in view the facts and circumstances of the case, the finding rendered by the lower Appellate Court on issue No.1 resulting into dismissal of the suit is hereby set aside and that of the trial Court is restored. The substantial questions of law as noticed above are answered in favour of the appellants-plaintiffs and against the respondent-defendant.

With the aforesaid observations, the appeal stands allowed.

(AMIT RAWAL)
JUDGE

06.04.2016
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