

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

R.S.A.No.1013 of 2007 (O&M)

Date of Decision: September 07, 2016

Rohtash

...Appellant

Versus

Balwant Singh

...Respondent

**CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

Present: Mr.Naveen S. Bhardwaj, Advocate,  
for the appellant.

Mr.Gobind Dhanda, Advocate,  
for the respondent.

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**AMIT RAWAL, J. (Oral)**

Appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit for possession filed on 4.3.1999 on the basis of the title, has been decreed by both the Courts below.

Mr.Naveen S. Bhardwaj, learned counsel for the appellant-defendant submits that the respondent-plaintiff purchased the property in dispute vide two sale deeds dated 5.7.1982 and 17.5.1984. The vendor of the plaintiff was none else but alleged tenant. In the sale deed, it is recited that Ganga Devi was tenant. Muni Devi, mother of the appellant, was the daughter of Ganga Devi and, therefore, there was relationship of landlord and tenant as Muni Devi had attorned the respondent-plaintiff as a tenant and, thus, the suit for possession, *ex-facie*, was not maintainable as the remedy, if any, for the respondent-plaintiff was to seek eviction under the prevailing rent law.

As regards the plea of adverse possession, the same was taken

as an alternative plea on the premise that in case the plea of tenancy is not accepted, then the suit was barred by law of limitation as it was filed in 1999 and the limitation to take possession is 12 years and said period expired way back in the year 1996 and, therefore, the appellant had become the owner by way of adverse possession as in the replication, there is a categorical pleading that Muni Devi, mother of the appellant, was given permission to stay in the house for performance of the last rites of Ganga Devi, which itself is a clincher. Muni Devi being daughter of Ganga Devi, was tenant of Anand Sarup, vendor of the plaintiff. All these aspects have escaped notice of both the Courts and, therefore, urges this Court for setting-aside of the concurrent findings, which are not only fallacious but perverse.

Per contra, Mr.Gobind Dhanda, learned counsel for the respondent-plaintiff submits that the aforementioned sale deeds were challenged by the vendor Anand Sarup and the same became final as per the judgment and decree of the Lower Appellate Court Ex.P4 dated 6.12.1996 and, therefore, cause of action arose to seek possession and, thus, the averments made in paragraph 2 of the written statement with regard to Muni Devi having entered into possession in 1986 is neither here nor there, much less rigours of Article 65 of the Limitation Act would not be attracted. The appellant-defendant has failed to establish the factum of relationship of Muni Devi with Ganga Devi and, thus, cannot claim the protection of prevailing rent law and, thus, urges this Court for affirming the findings.

In rebuttal, Mr.Bhardwaj submits that both the Courts below have granted mesne profits w.e.f. 1986, whereas it cannot go beyond three years.

I have heard the 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.Bhardwaj vis-a-vis the plea of tenancy and adverse possession, but some basis vis-a-vis claim of decree qua mesne profits, for, appellant-defendant has failed to lead evidence as per the provisions of Section 50 of the Indian Evidence Act to prove that Muni Devi was daughter of Ganga Devi, in essence relationship between Ganga Devi and Muni Devi remained unproved, therefore, the benefit of prevailing rent law cannot be taken.

As regards the plea of adverse possession, I am of the view that since title of the respondent-plaintiff was under cloud and attained finality only in 1996, i.e., on 6.12.1996, vide Ex.P4, and the suit was filed on 4.3.1999, therefore, it cannot be said to be barred by law of limitation and, therefore, defendant cannot take the plea of ownership by way of efflux of time, much less has not been able to prove the ingredients of adverse possession, i.e., animus possidendi.

The respondent-plaintiff has claimed mesne profits w.e.f. 15.4.1986. I am of the view that the mesne profits cannot exceed beyond the period of three years, therefore, the judgment and decree qua granting of decree of possession is up held, but qua mesne profits, it shall only relate back to three years prior to the filing of the suit.

Appeal stands disposed of in the aforementioned terms.

**September 07, 2016**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**

**Whether speaking/reasoned**

**Yes/No**

**Whether Reportable:**

**Yes/No**