

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

**RSA No.1307 of 2010 (O&M)
Date of Decision.01.09.2016**

Major son of Sh. Hardam

.....Appellant

Vs.

Devi Lal and others

.....Respondents

Present: Mr. P.K. Ganga, Advocate
for the appellant.

Mr. Sandeep Punchhi, Advocate
for the respondent Nos.1 to 3..

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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?

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff is aggrieved of the finding rendered by the lower Appellate Court whereby the suit seeking declaration that the plaintiffs have become owners by way of long and settled possession under the Punjab Occupancy Tenants (Vesting of Proprietary) Act, 1887 and as well as alternative relief of adverse possession, has been dismissed by setting aside the judgment and decree passed by the trial Court.

Mr. P.K. Ganga, learned counsel for the appellant-plaintiff submits that the fact that mutual distinct pleas could not be taken, weighed in the mind of the lower Appellate Court, however, a misc. application bearing No.5253-C of 2010 had been moved seeking liberty of the Court to abandon the claim qua adverse possession, thus, urges this Court for confirming the finding of the trial Court whereby they have been declared to

Court by formulating the substantial questions of law as drawn in the memorandum of appeal.

Mr. Sandeep Punchhi, learned counsel for the respondents submits that the trial Court did not grant them status of ownership but accorded status of tenants and as per the provisions of 1887 Act, no first appeal has been filed by the plaintiffs and therefore, cannot take up the plea for the first time in this Court as they have lost their right in view of the fact that they have not availed the remedy available under the 1887 Act, thus, urges this Court for confirming the finding rendered by the lower Appellate Court by dismissing the second appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that finding rendered by the trial Court is only to accord the status of plaintiffs as tenants and not of ownership in view of provisions of Sections 5 and 8 of the 1887 Act. No doubt, two mutual pleas cannot be taken i.e. of ownership and adverse possession. Even if this Court deems it appropriate to permit the appellant-plaintiff to abandon the relief qua adverse possession, he would not be able to overcome the provisions of 1887 Act by not having availed the remedy of first appeal against the finding of the trial Court. In my view, such an exercise would be futile one.

For the foregoing reason, I am of the view that once a party, which is accorded status of tenant by the trial Court, lost the right to challenge the same in first appeal as per the aforementioned provisions of 1887 Act, cannot be granted declaration of ownership. I do not find any reason to differ with the finding rendered by the lower Appellate Court as the same is based upon correct appreciation of documentary as well as oral

evidence, much less, no substantial question of law arises for consideration.

No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 01, 2016
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No