

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.2308 of 2010 (O&M)

Date of decision:24.09.2016

Hirda Ram

... Appellant

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjay Verma, Advocate
for the appellant.

Mr. D.K.Mittal, DAG, Haryana.

AMIT RAWAL J. (Oral)

Appellant-plaintiff is aggrieved of the impugned judgments and decrees passed by both the Courts below, whereby, suit for possession of the suit land described as per the demarcation report, Ex.P1 and Ex.P5, has been dismissed, on the ground that the respondent-defendants constructed the road thereon and have become owners by way of adverse possession.

Mr. Sanjay Verma, learned counsel appearing on behalf of the appellant-plaintiff submits that the respondent-defendants cannot take the plea of adverse possession, in view of the ratio decidendi culled out by the Hon'ble Supreme Court in **State of Haryana vs. Mukesh Kumar and others 2011 (10) SCC 404**. Once the plea of ownership is admitted, the appellant-plaintiff would be satisfied, in case, he is compensated in terms of money with regard to the area in occupation of the defendants. The Courts

below ought to have pondered on this issued instead of dismissing the suit on limitation.

Mr. D.K.Mittal, learned Deputy Advocate General, Haryana appearing on behalf of the respondents submits that the defendants have been able to set up a plea of adverse possession and therefore, the Courts below have rightly dismissed the suit being barred by law of limitation in view of the provisions of Articles 64 and 65 of the Limitation Act.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below and of the view that the Courts below have not appreciated very wider aspect, that once in the cross examination DW1- Randhir Singh Forest Range Officer stated that the Government has constructed the road as described in the demarcation report. Instead of ordering possession, the respondents should have been directed to take appropriate measure for acquisition of land or pay compensation. No person can be deprived of land as per the provisions of Article 300-A of the Constitution of India. Taking over the possession of the land by the State of Haryana being welfare State is totally against the provisions of Constitution of India.

No doubt, this Court on earlier occasions had been framing the substantial questions of law while deciding the appeal 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 Vs. Chandrika and others AIR 2016 SC 1213** wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, whether 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. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC was not correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back and therefore, I do not intend to frame the substantial questions of law while deciding the appeal aforementioned.

I am of the view that instead of ordering possession, the Court should have taken the appropriate measure as noticed above. Accordingly, the judgments and decrees under challenge are modified. The suit is decreed with direction to the respondents to take the appropriate measure as prescribed in the demarcation report and assess the compensation in terms of money.

All these exercise should be done within a period of six months from the date of receipt of a certified copy of this order.

Accordingly, the Regular Second Appeal disposed of.

(AMIT RAWAL)
JUDGE

September 24, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No