

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

RSA No.2765 of 2010(O&M)

Date of decision :09.12.2016

Raj Singh and others

.....Appellants

Versus

Baria and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Ms.Monika Jalota, Advocate
for the appellants.

DARSHAN SINGH, J. (Oral)

This Regular Second Appeal has been preferred against the judgment and decree dated 17.02.2010 passed by the learned Additional District Judge, Nawanshahr, whereby the appeal filed by the appellants-plaintiffs against the judgment and decree dated 26.03.2008 passed by the learned Civil Judge (Jr. Division), Nawanshahr, has been dismissed.

2. The appellant-plaintiff has filed the suit for declaration to the effect that they have become the actual owner in possession of the suit property on the basis of adverse possession.

3. The said suit was contested by the respondents.

4. The learned trial Court vide impugned judgment and decree dated 26.03.2008 has held that the plaintiff is proved to be in possession over the suit land, but he has not become the owner of the land by way of adverse possession. The said finding were affirmed by the learned First Appellate Court. Hence this Regular Second Appeal.

5. I have heard Ms. Monika Jalota, Advocate, learned counsel for

the appellants and have carefully gone through the paper book.

6. Initiating the arguments, learned counsel for the appellants contended that the appellants-plaintiffs have become the owner of the suit property on the basis of adverse possession as they and earlier to them their predecessor-in-interest were in possession of the suit property for the last more than 50 years.

7. I have given my thoughtful consideration to the aforesaid contentions.

8. Now, it is well settled principle of law that the suit for declaration seeking the ownership on the basis of adverse possession is not maintainable. The plea of adverse possession can only be taken in defence in a suit filed by the plaintiff for possession on the basis of the title. The plea of adverse possession cannot be used as a sword to claim the title to the property in dispute. Reference can be made to case **Vijay Bhawar and others Vs. Ajaib Singh (deceased) through his LR 2015(3) R.C.R.(Civil) 604**. Even, the Hon'ble Apex Court in case **Gurdwara Sahib Vs. Gram Panchayat village Sirthala 2013(4) R.C.R. (Civil) 703** has categorically laid down that a person in adverse possession of the property cannot seek a declaration to the effect that such adverse possession has matured into ownership. He can use the plea of adverse possession only as a shield/defence if the proceedings have been filed against him and he has been arrayed as defendant.

9. Thus, keeping in view the aforesaid settled legal position, the appellants-plaintiffs cannot seek the declaration regarding acquisition of the tile to the suit property on the basis of adverse possession. Moreover, the learned Courts below have returned the concurrent finding of facts that the

appellants-plaintiffs have not been even able to establish their plea of adverse possession, which does not call for any interference by this Court.

10. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

11. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

09.12.2016

S.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No