

203

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

RSA-4418-2010 (O&M)

Date of decision : 01.03.2016

Anand Gir and another

...Appellants

Versus

Ram Kanwar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Giri, Advocate
for the appellants.

Mr. Rahul Vats, Advocate for
Mr. Gorakh Nath, Advocate
for respondents No.19 to 28, 32, 33, 36, 38,
40 to 42, 44 to 50, 52 to 54, 56 to 59
61 to 63, 66 to 68, 70, 73, 77, 78, 80,
81, 83 to 91.

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)

CM-13259-C-2010

Deficiency of the Court fee, has been made good.

CM stands disposed of.

RSA-4418-2010

The appellants-plaintiffs are aggrieved of the judgment and decree declining relief qua declaration, having acquired the ownership by way of efflux of time/adverse possession. Though, the respondents-defendants have been restrained from dispossessing the appellants-plaintiffs except in due course of law as they have been found to be in settled and long possession.

Mr. Ashok Giri, learned counsel appearing on behalf of the appellants-plaintiffs submits that both the Courts below have dismissed the suit that the plea of the adverse possession in affirmative, cannot be set up but only as the defence which finding is totally erroneous and fallacious, as the documentary evidence brought on record shows that there had been continuous settled and long possession. Article 65 of the Limitation Act does not provide whether such a plea can be taken only by the defendant or by the plaintiff, therefore, there has been a misdirection of the law and urges to this Court to formulate the substantial questions of law as carved out in the memorandum of appeal.

Mr. Rahul Vats, learned counsel appearing for Mr. Gorakh Nath, appearing on behalf of respondents No.19 to 28, 32, 33, 36, 38, 40 to 42, 44 to 50, 52 to 54, 56 to 59, 61 to 63, 66 to 68, 70, 73, 77, 78, 80, 81, 83 to 91, submits that the dispute, viz-a-viz the relief of permanent injunction, the trial Court enjoined the respondents-defendants not to dispossess the appellants-plaintiffs forcibly except in due course of law, and such finding has not been been assailed by the respondents-defendants. However, the suit is not maintainable in view of the law laid down by this Court in **“Bhim Singh and others V/s Zile Singh and others” 2006 (3) RCR (Civil) 97.**

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force in the aforementioned contentions, in view of the ratio decidendi culled out by this Court in **“Bhim Singh's case** (supra). It is a settled law that adverse possession cannot be taken as sword and can also be taken as the shield, which has already been taken by this Court in **“Bhim Singh's case** (supra) and the Division Bench judgment of this Court rendered in **“Vijay Bhawar and others V/s Ajaib Singh (deceased)**

through his LRs” 2015 (3) RCR (Civil) 604.

Keeping in view the aforementioned facts, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of the oral and documentary evidence, much less, no substantial questions of law arises to be determined by this Court.

Accordingly, the appeal is dismissed.

01.03.2016
yogesh

(AMIT RAWAL)
JUDGE