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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-703-2010 [O&M]

Date of Decision : March 16th, 2016

Om Parkash

.... Appellant

Versus

Jitender Singh and others

.. Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present Mr. Gorakh Nath, Advocate,
for the appellant.

Mr. Sanjay Mittal, Advocate,
for respondents No.1 to 8.

SHEKHER DHAWAN, J.

Present Regular Second Appeal by the defendant, is directed against the judgment and decree dated 6.5.2009 passed by learned Additional District Judge, Narnaul whereby, first appeal filed by two of the plaintiffs was allowed, reversing the judgment and decree dated 30.11.2006 passed by Additional Civil Judge [Senior Division], Narnaul.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that Plaintiffs filed a suit for permanent injunction restraining

defendant – Om Parkash from interfering in the suit property i.e. 'Gawara' part of Ahata No. 22, marked by letters 'ABCD' as detailed in the plaint. As per plaintiffs, they and their forefathers were in possession of the suit property for the last 80 years and using the same for tethering cattle etc. Defendant has no right to interfere in the peaceful possession, but he is strong headed person and he forcibly wants to take possession forcibly and as such, necessity of the filing the suit.

4. Defendant contested the suit, *inter alia*, taking the plea that the plaintiffs have no right, title or interest in the suit property and the defendants are owners in possession of the property since time of their forefathers and as such, the suit of the plaintiffs deserves dismissal.

5. On the pleadings of the parties, the Court of first instance settled the issues. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance dismissed the suit of the plaintiffs. However, the appeal filed before the Court of first Appeal by two of the plaintiffs was allowed. As such, the present Regular Second Appeal.

6. Learned counsel for the appellant submitted that the Court of first Appeal reversed the findings of Court of first Instance which were based on facts and evidence available on the file without any reason. The Court of first Appeal has not discussed about possession of the defendant-appellant on the suit property and as such, the said findings are liable to be reversed and the judgment and decree passed by the Court of first instance be restored.

7. Learned counsel for the respondents while arguing the point, submitted that the plaintiffs are owners in possession of the suit property. The defendant has claimed the ownership of the suit property on the plea

of adverse possession and law on the point is settled that if the defendant takes plea of adverse possession that by implication means admission of title of the plaintiffs. In this case, title of the plaintiffs is not disputed. Thus, the onus lawfully shifts on the defendant to discharge the same, but in the present case, the defendant failed to discharge that onus. On this point, reliance was placed upon judgment of a Coordinate Bench of this Court in **Communist Party, Ropar and others Vs. Sant Saran Bhalla [Dead] through his L.Rs. and others** 2007 (3) RCR (Civil) 361.

8. Learned counsel for the respondents also submitted that as the suit property is a plot only, it is settled proposition of law that the possession of an open land shall go with the owner. On this point, reliance has been placed on the judgment of Gujarat High Court in **Navalram Laxmidas Devmurari Vs. Vijayaben Jayvantbhai Chavda,** AIR 1998 [Guj] 17.

9. Learned counsel for the respondents also submitted that in view of the above legal proposition of law, the Court of first Appeal has rightly taken the view and the present appeal is without any merit and the same be dismissed.

10. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the facts are not disputed to the extent that the plaintiffs filed suit for permanent injunction on the ground that they are owners in possession of the suit land and the defendant was trying to interfere in the peaceful possession of the suit property. The defendant came with the plea that he is owner of the suit property by way of adverse possession and on the basis of long uninterrupted possession. The Court of first Appeal rightly took the view

that by taking the plea of ownership by way of adverse possession, the defendant by implication admitted the title of the plaintiffs. Such was the view taken by this Court in **Sant Saran Bhalla's case [supra]**. In such like cases, in the absence of documentary evidence, the title of plaintiffs stands proved when the defendant raised the plea of adverse possession because the plea of adverse possession by implication means admission of title of the plaintiffs. Since the title of the plaintiffs is not disputed, it is for the defendant to prove his adverse possession. In the present case, the defendant-appellant failed to prove his adverse possession. Therefore, the plaintiffs are certainly entitled to seek decree of injunction.

11. It is not disputed that possession over an open land is always deemed to be that of the owner and not of a trespasser. An owner of an open plot is ordinarily presumed to be in possession of it and this presumption becomes strong in his favour when the defendant fails to establish the ground on which he claims to have come in possession, as in the present case. Thus, as the plaintiffs are owners of the suit property, there is valid presumption regarding possession of the plaintiffs over the suit land. More so, there is no substantial question of law involved in the present appeal and hence, the same is not maintainable under Section 100 of the Code of Civil Procedure.

12. In view of the above discussion, the findings of fact recorded by the Court of first Appeal are hereby affirmed and the present appeal stands dismissed being devoid of any merit.

(SHEKHER DHAWAN)
JUDGE

March 16th, 2016
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