

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

1. RSA No.1670 of 2011 (O&M)
Date of decision : 28.01.2016

Tek Chand

...Appellant

Versus

Nita Lal and ors.

...Respondents

2. RSA No.1728 of 2011 (O&M)
Date of decision : 28.01.2016

Nita Lal and ors.

...Appellants

Versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Vikas Kumar, Advocate
for the appellant (In RSA No.1670 of 2011)

Mr. T.C. Dhanwal, Advocate for respondent Nos.1 to 6.
(In RSA No.1670 of 2011)
for appellants (In RSA No.1728 of 2011)

AMIT RAWAL, J. (Oral)

CM No.4621-C of 2011

For the reasons stated in the application, which is duly supported by an affidavit, delay of 3 days in filing the appeal is condoned.

Application stands allowed.

Main case

This order of mine shall dispose of two Regular Second Appeals bearing No.1670 of 2011 titled as Tek Chand Vs. Nita Lal and ors., RSA No.1728 of 2011 titled as Nita Lal and ors. Vs. State of Haryana and ors. Nita Lal had filed civil suit No.180-C of 2000/2007 dated 30.05.2000 (hereinafter to be referred as the “Suit No.1”) for seeking injunction to the effect that defendants be restraining from interfering and or raising construction on land measuring 71 kanals 14 marlas comprised in khasra No.174/2 situated in Village Bheri Akberpur as per the jamabandi 1995-96 as the land is owned and possessed by the them and as well as mandatory injunction against the defendant Nos.1 to 4 to remove unauthorized construction, whereas Tek Chand filed civil suit No.306-C dated 20.6.2000 (hereinafter to be referred as “Suit No.2”) claiming declaration that owing to the long and continuos possession they have become owner by way of adverse possession with consequential relief of prohibitory and mandatory injunction restraining defendant Nos.8 to 12 not to forcibly interfered and raised construction on the suit property. The aforementioned both the suits had been dismissed on the basis of oral and documentary evidence.

Mr. T.C. Dhanwal, learned counsel appearing on behalf of appellant-plaintiff in RSA No.1728 of 2011 submits that Nita Lal in, Suit No.1, sought the injunction on the ground that appellants-plaintiffs are

owner of the property in dispute. Both the Courts below have erroneously dismissed the claim on the ground that documents Ex.P1 to Ex.P13 have not been proved in accordance with law though they are relevant documents and carries presumption of truth and thus substantial question of law arises as the judgment and decree of the Courts below suffers from illegality and perversity, much less, misreading of the aforementioned documentary evidence.

Mr. Vikas Kumar, learned counsel appearing on behalf of Tek Chand in Suit No.2 submits that aforementioned suit was filed on the premise that predecessor-in-interest of the appellant-plaintiff were in continuous peaceful, hostile and uninterrupted possession since 1963 and this fact has been effected in the column of cultivating possession and, therefore, Courts below have committed illegality and perversity in dismissing the suit. Even otherwise, Nita Lal and other defendants, appellant-plaintiff in suit No.1 have not been held to be owner in the “second suit” on the ground that land was reserved for the purpose of gair mumkin. No evidence has been placed on record to show that under what circumstances the aforementioned land can be mutated in the name of plaintiff in civil suit No.1 and thus there is illegality and perversity in the findings rendered by both the Courts below.

I have heard learned counsel for parties and appraised the paper book.

In Civil Suit No.1, the appellant-plaintiff had failed to lead evidence, much less, prove documentary evidence in accordance with law. It is settled law that mere exhibition of the documents does not dispense with

its proof. Reference is invited to ratio decidendi culled out by Hon'ble Supreme Court in *Sait Tarajee Khim Chand and ors. Vs. Yelamarti Satyam and ors. 1971 AIR SC 1865*. There is another aspect of the matter. The appellant-plaintiff has not stepped into the witness-box and made averments that appellant-plaintiff failed to prove the case and rightly suit has been dismissed.

I do not find any illegality and perversity in the judgment rendered by both the Courts below. As regards other RSA, appellant-plaintiff in suit No.2 has not been able to prove the possession over the property. Even otherwise, suit claiming adverse possession is not maintainable in lieu of judgment rendered in *Bhim Singh and ors. Vs. Zile Singh and ors, 2006(3) RCR (Civil) 97*, rightly so, has been dismissed, therefore, I do not intend to differ with the findings rendered by both the Courts below based upon appreciation of oral and documentary evidence.

Appeals are dismissed.

28.01.2016

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**(AMIT RAWAL)
JUDGE**