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

RSA-4382-2011 (O&M)

Date of decision : 04.03.2016

Balwant Singh and others

...Appellants

Versus

Jiwa Ram

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Virk, Advocate for
Mr. G.S. Nagra, Advocate
for the appellants.

Mr. Ranjit Singh, Advocate
for the respondent.

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)

The appellants-defendants are aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the suit of the respondent-plaintiff for possession and permanent injunction in respect of land measuring 4 marlas situated within 11 lakir of village Naurangpur, has been decreed, by reversing the judgment and decree of the trial Court vide which the suit was dismissed.

Mr. G.S. Virk, learned counsel appearing on behalf of the appellants-defendants submits that respondent-plaintiff failed to discharge the onus, therefore, no occasion arose to rebut the same, in essence, the suit for

possession and permanent injunction was based upon the title. Nakelu Ram and Madho Ram were co-sharers in respect of the total land measuring 4 marlas. The defendants on the basis of the family settlement arrived at between Nakelu Ram and Madho Ram purchased entire land vide writing dated 04.03.1985 from Madho Ram. The respondent-plaintiff in cross-examination admitted that they shifted the place of abode in 1986, whereas the suit was filed in March 2001, the trial Court formed an opinion that the defendants had been able to prove their hostile possession viz-a-viz the plaintiff, for, there is categoric pleadings of continuous possession since 1985, has been proved. The lower Appellate Court has also committed the illegality and perversity in taking the document to be unregistered, though, the value of the document was ₹ 1,000/-, but the fact remains that the property was within lal lakir, therefore, no registration was required. He further submits that there was a categoric pleading that Madho Ram shifted the place in 1985, therefore, the plaintiff had failed to file suit within a period of limitation, whereas, the ingredients of Article 65 of the Limitation Act, have been proved, thus, substantial question of law arises for determination.

Mr. Ranjit Singh, learned counsel appearing on behalf of the respondent-plaintiff submits that any document transferring the share having more than ₹ 1,000/- requires registration. The document (Ex.D2) as per the provisions of Section 33 of the Indian Stamp Act, 1899, was liable to be confiscated and not admissible in evidence, as per the provisions of Section 35 of the aforementioned Act. No evidence has been led on behalf of the defendants to show that the possession had been adverse, long and uninterrupted, except bald statement in the written statement and rightly so, the

suit has been decreed.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit in the appeal, as the defence of adverse possession tantamounts to admitting the fact of ownership of plaintiff. No evidence has been led to prove that in view of the family settlement, ownership of land changed land, whereas Nakelu Ram was the owner of the property, therefore, the writing Ex.D2, could not be looked into, for want of payment of the stamp duty, much less, registration charges. In case, the appellants-defendants are in possession of the property, they could have led evidence i.e. Electric Connection, Ration Card etc., to show that they are in long and settled possession since 1985, in order to seek the dismissal of the suit being barred by law of limitation.

In view of the above, I am of the view that the appellants-defendants have failed to prove the adverse possession and rightly so, the suit has been decreed.

Keeping in view the aforementioned facts and circumstances, I do not intend to differ with the findings rendered by the lower Appellate Court, much less, no substantial question of law arises for determination.

With the aforesaid observations, the appeal is dismissed.

04.03.2016
yogesh

(AMIT RAWAL)
JUDGE