

215

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

**RSA-4448-2012 (O&M)
Date of decision : 12.07.2016**

Hakam Singh and others

... Appellant(s)

Versus

Isham Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advocate
for the appellant.

Mr. Avnish Mittal, Advocate
for respondent Nos.1 to 3.

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-12377-C-2012

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the LRs of Kapoor Singh, are ordered to be impleaded for the purpose of prosecuting the present appeal.

CM stands disposed of.

RSA-4448-2012

The appellant-plaintiff is aggrieved of the impugned judgment and decree of lower Appellate Court, whereby the suit for declaration to the

effect that the appellant(s)-plaintiff(s) had become exclusive owner in possession of the suit land on the basis of the adverse possession and the relief of injunction qua possession has been dismissed.

Mr. Akshay Bhan, learned Senior Counsel assisted by Mr. Santosh Sharma, learned counsel appearing on behalf of the appellant(s)-plaintiff(s) submits that the stake of the appellant(s)-plaintiff(s) was primarily based upon the provisions of Section 27 of the Limitation Act regarding the extinguishment the right/title of the respondent(s)-defendant(s), in that context, the suit was decreed by the trial Court, however, the lower Appellate Court has erroneously reversed the findings by holding that plea of adverse possession cannot be taken in affirmative, but as a defence. He further submits that possession of the suit is not disputed and in case, this Court does not agree with the contentions, aforementioned, then the appellant(s)-plaintiff(s) may be dispossessed forcibly except in due course of law, thus, urges this Court to formulate the following substantial question of law:-

Whether a person, who is found to be in long and settled possession, can be dispossessed forcibly except in due course of law or not?

Mr. Avnish Mittal, learned counsel appearing on behalf of the respondent(s)-defendant(s) submits that the plea of adverse possession, in the absence of the specific averments qua the ingredients of Section 27 of the Limitation Act, cannot be taken in affirmative, but only in defence. In support of his contentions, he relies upon the judgment of Single Bench rendered by this Court in **“Bhim Singh and others V/s Zile Singh and**

others” 2006 (3) RCR 97 and Division Bench judgment rendered in “Vijay Bhawar and others V/s Ajaib Singh (deceased) through his LRs” 2015(3) RCR (Civil) 604.

He further submits that the respondent(s)-defendant(s) are the sisters of the Sadhu Singh and therefore, they are last legal heirs, thus, urges this Court for affirming the findings of the lower Appellate Court, under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the appellant(s)-plaintiff(s) cannot claim the declaration qua ownership on the basis of the adverse possession as on going to the ingredients and averments made in the plaint, the claim was not based as per the provisions of Section 27 of the Limitation Act. The candid admission in the written statement did not accord status of owner to the appellant-plaintiff.

As regards the possession, I am of the view that the appellant(s)-plaintiff(s) admittedly found to be in long and settled possession and therefore, they cannot be dispossessed except in due course of law, in essence, the suit of the appellant(s)-plaintiff(s) is required to be partly decreed viz-a-viz the injunction in view of mine is supported by the law laid down by Hon'ble Supreme Court rendered in “Rame Gowda Vs. M. Varadappa Naidu (dead) by LRs and another, 2004(1) SCC 769, thus, rightly so, the lower Appellate Court has declined the relief and accordingly, the findings qua declaration are hereby upheld.

With the aforementioned modification in the judgment and decree of the lower Appellate Court, the appeal is partly allowed by

upholding the findings of the lower Appellate Court qua declaration.

The appeal stands partly allowed.

12.07.2016
yogesh

(AMIT RAWAL)
JUDGE