

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1734 of 2013 (O&M)
Date of decision : January 11, 2016

Jagtar Singh

..... Appellant

Versus

Ajit Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Kewal Krishan, Advocate
for the appellant.

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 No.10934-C of 2015

C.M.is allowed.

Copy of judgment dated 28.10.1989 taken on record.

RSA No. 1734 of 2013(O&M)

The appellant-defendant No.2 is in Regular Second appeal against the concurrent finding of fact whereby the suit filed by the respondents-plaintiffs seeking declaration for setting aside of mutation No.2054 has been decreed.

Mr. Kewal Krishan, learned counsel appearing on behalf of the appellant has raised multi fold arguments which are enumerated as under:-

In the earlier round of litigation the suit has been

instituted at the instance of Harbhajan Singh which was dismissed on 28.10.1989. The appeal filed against the same was also dismissed on 16.10.1996. The mutation was effected in the name of the appellant. During that period no such plea or counter claim was raised by the respondents-plaintiffs. The suit for declaration was ex facie time barred as the appellant-defendants have been in continuous, un-interrupted and hostile possession of the suit property. A simpliciter suit for declaration without claiming relief of possession is not maintainable. Both the courts below have erroneously and perversely not noticed the aforementioned contentions. Thus, a substantial question of law arise for determination by this Court.

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

The suit filed is not a simpliciter suit for declaration but for permanent injunction as well as for joint possession. Till the culmination of the proceedings noticed above the mutation was entered in the name of respondents-plaintiffs. It is only thereafter the mutation was effected in the name of the appellant. It has been a categorical case of the respondents-plaintiffs that they are residents of U.P. and mutation proceedings were initiated at their back. The amendment suit had never been rebutted. In the absence of rebuttal, the arguments made in the plaint deemed to have been dismissed.

The appellant has not been able to lead any documentary, cogent/convincing evidence to show that the possession has been un-interrupted, long and continuous as well as

to the knowledge of defendant.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the courts below.

No substantial question of law arise for determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

January 11, 2016
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