

RSA No.1044 of 2016 (O&M)

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

RSA No.1044 of 2016 (O&M)

Date of decision:20.09.2016

Mahender Singh and others

... Appellants

Vs.

Gurdial Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Gurinder Pal Singh, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-defendants are aggrieved of the concurrent findings of facts and law, whereby, the suit for possession and permanent injunction at the instance of the respondent-plaintiffs, has been decreed.

Mr. Gurinder Pal Singh, learned counsel appearing on behalf of the appellant-defendants submits that as per the judgment and decree dated 13.06.1977 (Ex.P1) passed in civil suit No.182 of 12.07.1962, the suit was decreed holding therein, that the plaintiffs would become owners after the death of Amar Singh, father, who had allegedly sold the land. In essence, the respondent-plaintiffs were given ownership and right of possession in anticipation. If at all, they are aggrieved, they could have sought the possession/joint possession in the earlier suit. The aforementioned judgment and decree has been assailed upto this Court, vide RSA No.2946 of 1979

and even during the pendency of RSA, LR of Amar Singh, i.e., respondent-plaintiff could have filed an application for amendment of plaint, therefore, the suit is hit by the provisions of Order 2 Rule 2 of Code of Civil Procedure. All these facts have not been taken care of by both the Courts below.

I have heard learned counsel for the appellant-defendants and appraised the judgments and decrees of both the Courts below.

The suit for possession and permanent injunction has been filed on 03.08.1985, i.e., on demise of Amar Singh. The previous decree had already been extracted by the trial Court in paragraph 16 of the judgment. For the sake of brevity, the same reads thus:-

“In view of my findings on the above issues, the suit of the plaintiffs succeeds and I grant a decree for declaration in favour of the plaintiffs and against the defendants to the effect that the sale of suit land are illegal, void and not binding on the reversionary rights of the plaintiffs. After the death of Amar Singh, his legal heirs shall be owners of the suit land and entitled to the possession of the suit land. The parties are left to bear their own costs of the suit. Decree sheet be prepared and file be consigned to the record room.”

It is conceded position on record that Amar Singh expired on 01.03.1985. It is in this aspect of the matter, the suit aforementioned was filed. I am of the view that cause of action accrued to the plaintiffs only after the demise of Amar Singh and the suit had been filed with

promptitude, therefore, rigours of Order 2 Rule 2 CPC would not come into play, as earlier judgment and decree had attained finality. Even there is no force in the submission of Mr. Gurinder Pal Singh, for seeking amendment of the plaint. In my view, the defendants have remained unsuccessful in getting the suit adjudicated by the trial Court in the year 2014. They should thank to the stars as the plaintiffs have not claimed use and occupation charges. It is too late in a day to interfere in the joint possession as they are living together for many years.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 20, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No