

In the High Court of Punjab and Haryana at Chandigarh

**RSA No. 1247 of 2016(O&M)
Date of Decision:28.3.2016**

Kewal Singh

---Appellant

vs.

Daljit Kaur and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Ramesh Sharma, Advocate
for the appellant

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

Rekha Mittal, J.

The defendant is in appeal against the consistent findings recorded by the courts below whereby suit for possession of land measuring 8 kanals 16 marlas, detailed in the head note of the plaint, was decreed by the learned trial court while rejecting claim of the defendant-appellant in regard to his having become owner on the basis of adverse possession and findings recorded by the trial court were affirmed in appeal without any variance.

Counsel for the appellant has two fold submissions to make to

assail the findings recorded by the courts below. The first submission made by counsel is that though an additional issue No. 5-B “whether defendant has become owner of the suit land by way of adverse possession?OPD” was framed but the learned trial court did not record any finding on the said issue and the said fact was specifically asserted in the grounds of appeal and before the appellate court. Another submission made by counsel is that the appellant filed an application for additional evidence before the appellate court in order to produce copies of jamabandis and khasra girdawaris reflecting his possession on the suit land but the same was wrongly and illegally rejected by the court in appeal.

I have heard counsel for the appellant, perused the records but find no merit in the appeal.

As per the settled position in law, technicalities cannot be allowed to stand in the way of substantial justice. No doubt, the judgment passed by the trial court does not make reference to issue No. 5-B aforesaid but a plain reading of the judgment of the learned trial court particularly para 10 whereby issue No. 1 was determined in favour of the plaintiffs-respondents, it becomes an undisputed position of the case that the learned trial court has addressed the issue of adverse possession claimed by the appellant in detail but rejected the prayer by taking into consideration the evidence on record and in the light of judgments referred to in para 10 of the judgment. The appellate court after taking into consideration issue No. 5-B, the findings recorded by the trial court in regard to claim of the appellant qua ownership of the suit land on the basis of adverse possession has negatived plea of the appellant that he has become owner of the suit land on

the basis of adverse possession. In this view of the matter, the appellant cannot derive any advantage to his contention merely because the judgment passed by the learned trial court does not make a specific reference to issue No. 5-B which has otherwise been answered by the learned trial court.

The appellant filed an application for additional evidence to produce on record certified copies of the jamabandis and khasra girdawaris in order to substantiate his plea that he is recorded to be in possession of the suit land for the past more than 12 years before institution of the suit. Counsel for the appellant is not in a position to contend as to how the application filed for additional evidence is covered within the purview and ambit of Order 41 Rule 27 (1)(a) and (aa) of the Code of Civil Procedure. This apart, the mere long possession is not sufficient to acquire title by extinguishing title of the true owner.

Both the courts below have dealt in detail that the appellant failed to prove as to since when he started claiming possession hostile to title of the true owner and the basis on which his plea in regard to hostile title gets substantiated. In this view of the matter, the contentions raised by counsel for the appellant sans merit when otherwise the same does not give rise to any question of law much less a substantial one.

For the reasons aforesaid, the appeal is dismissed in limine.

(Rekha Mittal)
Judge

28.3.2016
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