

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

R.S.A.No.3553 of 2013 (O&M)

Date of Decision: May 4th, 2016

**The Karandi Cooperative Agricultural Society Ltd., Karandi, Tehsil
Sardulgarh**

...Appellant

Versus

Mohinder Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

**Present: Mr.Hari Om Sharma, Advocate,
for the appellant.**

**Mr.S.S.Sahu, Advocate,
for respondent No.1.**

AMIT RAWAL, J.

Appellant-defendant No.1 is in Regular Second Appeal against the decretal of the suit and dismissal of the appeal, whereby the suit at the instance of the respondent-plaintiffs has been decreed and they have been held to be owners of land measuring 0K-4M as detailed in the head note of the plaint and the defendants have been held to be in illegal possession and consequently, the respondent-plaintiffs have been held entitled to take possession of the said land within three months from the date of the passing of the decree and the defendants have been enjoined from raising any construction thereon.

Mr.Hari Om Sharma, learned counsel appearing on behalf of the appellant-defendant submits that the demarcation report dated

12.12.2009 was conducted during the pendency of the suit at the back of the appellant-Society. The Society was never given any notice and, therefore, it could not have been relied upon. It is a matter of record that the appellant-Society is the owner of the land measuring 1 kanal 10 marlas and, therefore, the Court ought not to have non-suited the appellant-defendants for not placing on record copy of the sale deed, in essence, the respondent-plaintiffs have failed to lead any evidence with regard to the alleged encroachment done in the year 2008, whereas the appellant-Society had raised construction on the land 30 years back. The trial Court did not frame the issue with regard to the limitation, in essence the suit for possession was expressly barred by law of limitation as the possession had matured into adverse possession. The suit was also bad for non-joinder of necessary parties, which fact has also not been noticed. The demarcation report did not disclose the fixation of pucca points. PW-2, PW-3 and PW-4 did not appear for cross-examination, in essence the respondents had extinguished the right in claiming the possession and, thus, urges this Court to formulate the substantial questions of law as culled out in the memorandum of appeal.

Mr.S.S.Sahu, learned counsel appearing on behalf of respondent No.1 submits that the appellant-Society failed to place on record copy of the sale deed vide which they have purchased the land. They cannot rely upon the vague admission of the ownership. Copy of the sale deed was essential as it would have depicted the dimensions of the property alleged to have been purchased by the appellant-Society and could have been compared with the demarcation report for determining the encroachment. Appellant-Society has also made no effort to get the property demarcated/re-demarcated, much less no objection petition was filed and,

therefore, the demarcation report has been relied upon by the Courts below. The concurrent findings of facts cannot be interfered with unless and until the substantial question of law arises for determination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the appeal sans merits, for, in the absence of the copy of the sale deed, the Court has been prevented to compare the dimensions of the property allegedly in possession of the appellant-Society. Taking up the plea of adverse possession tantamounts to admitting the title of the adverse party.

In my view, the respondent-plaintiffs have proved the alleged encroachment on 0K-4M of land, whereas on the contrary the appellant-Society has not led any corroborative evidence, much less direct evidence to disbelieve the alleged encroachment on 0K-4M land. Even if the issue of limitation had not been framed, Court can always take into consideration the aforementioned factum, but in the instant case, the appellant-Society had not been able to prove the exact date, year and other circumstantial evidence to show that they have been in uninterrupted and continuous possession of the land, thus, became owner by way of adverse possession. In the absence of such evidence, in my view, the appellant-Society has miserably failed to prove the aforementioned ingredients. The jamabandi for the year 2003-04 showed the plaintiffs to be in possession and as per the averments in the plaint, the alleged encroachment was made on 0K-4M land in the year 2008, thus, the plea of long and uninterrupted possession cannot be remotely pleaded.

For the foregoing reasons, I do not find any illegality and perversity in the impugned judgments and decrees, much less no substantial

question of law arises for determination by this Court. There is no merit in the appeal. The same stands dismissed.

May 4th, 2016
ramesh

(AMIT RAWAL)
JUDGE