

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3558 of 2013 (O&M)

Date of Decision : 29.07.2016

Dr. Ramesh Chand

....Appellant

Versus

Raj Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Raman Mohinder Sharma, Advocate
for the appellant.

Surinder Gupta, J.

This is appeal by Dr. Ramesh Chand-defendant no. 4 against concurrent judgments and decrees passed by Courts below partly decreeing the suit filed by plaintiff-Raj Kumar seeking partition of joint property. Status of appellant-Dr. Ramesh Chand over the property mentioned in headnote (B) of plaint was that of a tenant on monthly rent of ₹100/-.

2. None of co-owners is in appeal against judgments of Courts below. However, appellant claimed himself to be owner of property in his possession i.e. property mentioned in headnote (B) and claimed to have attained title over the same by way of adverse possession. His plea was, however, discarded by Courts below.

3. Learned counsel for the appellant has argued that the appellant is in possession of property in question for the last more than 20 years and has electric connection in this property in his name and also voter identity card. In the absence of any evidence that he was let out suit property, Courts below have committed grave error while discarding his plea that he has become owner of the property in his possession by way of adverse possession.

4. In order to prove his title by way of adverse possession, it was incumbent on the appellant firstly to admit that plaintiff and others joint owners were real owners of suit property and secondly, that his possession is continuous, uninterrupted, hostile and to the knowledge of real owners and all others. Plaintiff-Raj Kumar while appearing as PW-9 has stated that appellant-defendant no. 4 is in possession of property situated at village Benra as tenant. In cross-examination, no suggestion was put to this witness that appellant is in adverse possession over the suit property. He was rather given suggestion that they have no concern with the suit property, which is owned by defendant no. 4. No suggestion was given to this witness that possession of the appellant is continuous, uninterrupted, hostile and adverse to the knowledge and interest of plaintiff and other co-owners. Plaintiff has also examined PW-1 Surinder Kumar, who has stated that appellant is tenant in the suit property. Even to this witness suggestion was given that plaintiff and defendants no. 1 to 3 have no concern with suit property. PW-2 Baldev Krishan has stated that appellant was tenant in his house about 19-20 years back, which he got vacated and sold to one Lachhman Dass. Two rooms in front of disputed premises, which are on rent with appellant, were sold by him to the appellant and he had taken the premises in question from defendant no. 1 on rent @ ₹100/- per month. PW-3 Lachhman Dass has stated that two rooms in the street were purchased by Dr. Ramesh Chand (appellant) from Baldev Krishan and adjoining portion was on rent with him under Ramesh Chand. On taking the disputed premises on rent from Ramesh Chand, appellant vacated the premises which he (Lachhman Dass) had purchased. PW-4 Harbans Singh has also stated about tenancy of appellant in the demised premises.

5. The appellant has come up with plea of title over the suit property by way of adverse possession but has utterly failed to prove the same by leading cogent and convincing evidence. During the course of arguments, learned counsel for the appellant could not point out that Courts below have either ignored any evidence on record or misread or wrongly interpreted the oral and documentary evidence produced on file calling for any intervention.

6. No substantial question of law requiring determination arises in this appeal, which has no merit.

Dismissed.

July 29, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/non-speaking

Yes/No

Whether Reportable

Yes/No