

RSA-210-2016(O&M)

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

RSA-210-2016(O&M)

Date of decision : 21.01.2016

Tarsem Singh and another

... Appellants

Versus

Rama alias Rupa and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.N. S. Kandhola, Advocate
for the appellants.

REKHA MITTAL. J.

CM-703-C-2016

Prayer in this application is to implead the legal representatives of Tarsem Singh-appellant No.1 and Gurdial Singh-respondent No.2.

In view of averments made in the application supported by an affidavit of Lehamber Singh, applicant-appellant No.2, the application is allowed and the persons mentioned in para No.2 of the application are brought on record as legal representatives of Tarsem Singh-appellant No.1 and those in para No.3 as legal representatives of Gurdial Singh-respondent No.2, subject to just exceptions, for the purpose of present lis.

CM-705-C-2016

Allowed as prayed for.

Annexures A1 to A8 are taken on record.

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The present regular second appeal lays challenge to the concurrent findings recorded by the courts below whereby the suit filed by the respondent for possession as co-owner of land measuring 4 kanals detailed in the head note of the plaint has been decreed by the learned trial Court and findings recorded by the trial Court have been affirmed in appeal.

Rama @ Rupa (respondent) filed suit for possession of suit land through his attorney Sh.Som Nath @ Soma on the premise that the suit land is owned and possessed by him to the extent of 23/25 share whereas Pritam Kaur widow of Gurdev Singh and Balihar Singh son of Gurdev Singh are co-owners to the extent of 2/25 share. Balihar Singh has passed away and Pritam Kaur is co-owner having life estate. The land was previously owned by Basant Singh, grandfather of the respondent and he died near about 1971-72. The suit land was inherited by Gurdev Singh along with four daughters of Basant Singh. Gurdev Singh has passed away and mutation No.13284 was sanctioned in favour of his son and the respondent. Jagan Nath, Soma @ Som Nath, Gurdev Kaur, Nasib Kaur, Charan Kaur and Parkash Kaur sold their share in the land in dispute to the respondent for a valuable consideration of ₹3,55,000/- vide registered sale deed dated 17.01.2007, thus, the respondent has become co-owner to the extent of 23/25 share in the suit land. The appellants-defendants taking advantage of absence of the respondent from the village have

illegally taken over possession of the land in January 2007. The appellants have got their own land towards eastern side of the land in dispute.

The appellants-defendants filed the written statement, challenged locus standi of the plaintiff-respondent to file the present suit. They have challenged the entries in the revenue record, in the name of the respondent, being wrong and illegal. They filed the counter claim on the premise that they have become co-owners in possession of the suit land on the basis of adverse possession and the entries in the revenue record i.e. jamabandi for the year 1956-57, 1961-62, 1966-67, 1971-72, 1976-77, 1981-82, 1986-87, 1991-92, 1996-97, 2001-02 in the column of ownership are void and not binding upon the rights of the counter claimants.

The learned trial Court, on a detailed consideration of the pleadings of the parties, issues framed for determination, evidence adduced on record and rival submissions made by their respective counsel accepted the claim of the respondent and dismissed the counter claim preferred by the appellants.

The appeal preferred by the appellants against the judgment and decree dated 06.02.2012 passed by the Additional Civil Judge (Senior Division), Phillaur did not find favour with the Additional District Judge, Bathinda and the same is accordingly dismissed whereby findings recorded by the trial Court were affirmed.

Still feeling aggrieved, the present appeal has been preferred by Tarsem Singh through his LRs and his brother Lehamber Singh.

Counsel for the appellants, at the outset, has submitted that he does not press the plea raised in the written statement that the appellants have become owners of the suit land on the basis of adverse possession. It is argued that due to some wrong legal advice, the appellants had set up the plea of adverse possession when as a matter of fact, they are in possession of the suit land since their forefathers as tenants, as reflected in jamabandis Ex.D1 to D8 starting as back as from the year 1955-56. It is further argued that as the appellants are the tenants in the suit land, they cannot be evicted from the suit land except by taking recourse to eviction proceedings under the relevant statute.

I have heard counsel for the appellants, perused the records and find no merit in the appeal.

Concededly, the appellants filed a counter claim on the premise that their possession is adverse to the title of the respondent and the said possession has fructified into title by way of prescription, continuous, open and hostile possession. The very fact that the appellants claimed ownership on the basis of adverse possession, it amounts to an admission on their part that the respondent is the owner of the suit land.

Counsel for the appellants has sought to raise an entirely different factual controversy by arguing that the appellants are the tenants in the suit land and therefore, they are entitled to protection against their

forcible eviction.

It has been held in catena of judgments that a legal issue may be allowed to be raised for the first time even at the stage of second appeal but there is no such provision/precedent that allows a party to take a complete somersault and raise a factual dispute entirely alien to the controversy raised before the Courts below particularly in the circumstances that the appellants have not filed an application for amendment of the written statement. As it was none of the plea of the appellants that they were the tenants in the suit land, no such plea can be allowed to be raised in the second appeal much less accepted. In this view of the matter, I find myself unable to accept submissions made by counsel for the appellants that either the appellants are the tenants in the suit land or they cannot be evicted therefrom except by taking recourse to proceedings for eviction by invoking provisions of the relevant statute.

No other point has been raised.

In view of what has been discussed hereinabove, neither any substantial question arises for adjudication as has been sought to be raised in the grounds of appeal nor there is any error much less illegality in the findings recorded by the Courts below. As a result, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(REKHA MITTAL)
JUDGE

January 21, 2016.

Davinder Kumar