

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

**RSA No.3005 of 2016 (O&M)
Date of decision:17.10.2016**

Rajender and others

... Appellants

Vs.

Rishal Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. D.K.Tuteja, Advocate
for the appellants.

Mr. Suresh Kumar Kaushik, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The appellant-defendants are aggrieved of the concurrent findings of facts and law, whereby, the suit for declaration and permanent injunction, has been decreed by both the Courts below.

Mr. D.K.Tuteja, learned counsel appearing on behalf of the appellants, in support of his grounds of appeal, raised the following arguments:-

- I) The mutation entries of 1973 have been challenged in the year 2013, therefore, the suit is hopelessly barred by law of limitation.
- II) The respondent-plaintiffs have failed to prove on record

any document of title with regard to the area measuring 2 kanals.

III) In fact, the suit simpliciter for declaration and permanent injunction in the absence of possession was not maintainable.

In support of his contentions, Mr. Tuteja relies upon the judgment of the Hon'ble Supreme Court rendered in **Sebastiao Luis Fernades (Dead) through LRs and others vs. K.V.P. Shastri (Dead) through LRs and others 2014(1) RCR (Civil) 607.**

He further submits that the appellant-defendants are also in continuous and long possession of the property and they had purchased 5 kanals of land, vide sale deed dated 23.10.1974 and since then the possession was notorious and hostile. All these factors have been escaped the notice of both the Courts below, thus, there is illegality and perversity in the findings under challenge.

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

Bringing the suit within the provisions of Article 59 of the Limitation Act, in view of the ratio decidendi culled out by the Hon'ble Division Bench of this Court in **Ibrahim alias Dharam Vir vs. Smt. Sharifan alias Shanti 1979 PLJ 469**, is no longer res integra. The cause of action would accrue to the party to file a suit when his title or possession is disturbed and not from the date of the mutation, thus, there is no force in the submission of Mr. Tuteja and the same is declined.

As regards the discharge of the burden qua the title and owner, the pleadings cannot be ignored. The issues are framed only where the parties are at variance. The appellants had taken a specific stand of adverse possession, therefore, title of the opposite party deemed to be admitted. The provisions of Order 8 Rule 5 CPC cannot be thrown out and the evidence is to be led only when the parties are at variance. For the sake of repetition, once the defendants had already taken the plea of adverse possession, therefore, the plaintiffs are not required to prove the same. The question which involves is whether the suit for declaration and injunction in the absence of possession would be maintainable or not.

There is a categoric admission of the appellants that they have raised the construction on 5 kanals of land which they have purchased and 2 kanals remained vacant. On the contrary, no evidence has been led that they are in possession of two kanals. It is in this background of the matter, the respondent-plaintiffs were wise enough to seek the relief of permanent and mandatory injunction which has been granted by both the Courts below. In view of the aforementioned facts and circumstances of the case, the ratio decidendi culled out by the Hon'ble Division Bench of this Court in Ibrahim's case (supra) would not be applicable to the present case.

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

October 17, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No