

RSA No.26 of 2015 (O&M)

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

RSA No.26 of 2015 (O&M)

Date of Decision: January 15, 2016

Bakhtaur Singh & others

...Appellants

Versus

Balvir Chand & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Jatinder K. Singla, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Talwandi Sabo, dated 15.11.2013, whereby, the suit for possession on the basis of title regarding land measuring 17 marlas alongwith suit for permanent injunction restraining the defendants from raising any type of construction over the suit property illegally and forcibly, stands decreed, appeal against which preferred by the appellant-defendants has been dismissed by the Additional District Judge, (Fast Track Court), Bathinda, on 07.10.2014.

It is the contention of the learned counsel for the appellants that the disputed land was in possession of the appellant-defendants and on the basis of the said possession, a pronote was

executed by Piare Lal, brother of the respondent-plaintiffs, on 28.09.1981, alienating the suit property to the appellant-defendants for a consideration of ₹800/-. He, on this basis, contends that since the year 1981, they are owners in possession of the suit property. He contends that in the light of the said pronote, on the basis of which title was conferred upon the appellant-defendants, there is no question of any permissible possession as has been asserted by the respondent-plaintiffs w.e.f. January, 1995. Contention has also been raised that as per the admission of the respondent-plaintiffs, they are in possession of the property which is open and hostile and on the basis of such adverse possession, they have become the owners of the said land. Counsel further contends that even the revenue record supports the possession of the appellant-defendants over the suit property. He further contends that the electricity connection as also the *warabandi* for irrigation of the land is in the name of the appellant-defendants which further fortifies the fact that they are in continuous possession of the land in dispute. His further assertions is that the suit preferred by the respondent-plaintiffs was time barred and therefore, the suit itself should have been dismissed on the said ground. Counsel also states that no specific issue has been framed with regard to the stand of the respondents claiming adverse possession and ownership on that basis. On the basis of these submission, counsel contends that the judgments and decree passed

by the Courts below cannot sustain and deserve to be set aside and the suit of the respondent-plaintiffs be dismissed.

I have heard the submissions made by the learned counsel for the appellants and with his able assistance, have gone through the impugned judgments and decree passed by the Courts below.

Taking upon the first contention of the learned counsel for the appellants with regard to conferring of title upon the appellant-defendants on the basis of the pronote dated 28.09.1981 executed by Piare Lal, brother of the plaintiffs, which was for alienating the property for a consideration of ₹800/-, suffice it to say that the said document is not a registered one and since admittedly, the transfer of the property is valued more than ₹100/-, registration of the said document was mandated as per Section 17 of the Indian Registration Act, 1908. In the absence of such a registration, title does not confer upon the appellant-defendants.

The second contention as raised by the learned counsel for the appellants is that the appellants are in possession of the property in dispute much prior to the year 1981 and in any case w.e.f. 1995 as has been admitted by the respondent-plaintiffs. Reference has also been made to the revenue record as also the electricity connection and *warabandi* being in the name of the appellant-defendants. The revenue record as has been brought on record,

does indicate that the appellant-defendants are in possession of the property since the year 1995 but the entry with regard to their possession is mentioned as Gair Marusi. In the light of the said entry, the plea of the respondent-plaintiffs with regard to the possession of the appellant-defendants being permissible is established. If the possession is a permissible possession, the plea of adverse possession as has been raised by the appellants for claiming title over the property cannot be accepted. The Courts below have rightly, therefore, come to the conclusion that the plea of adverse possession is not sustainable with regard to the claim as made by the appellant-defendants.

Contention of the learned counsel for the appellants that the suit is barred by limitation and therefore, should have been dismissed on this score alone, cannot be accepted as there is no limitation prescribed for seeking possession on the basis of title and further when the said possession has been found to be of permissive nature. The findings on this aspect of the Courts below cannot be faulted with.

As regards the contention of the learned counsel for the appellants that no specific issue has been framed with regard to the stand of the respondents claiming adverse possession and ownership on that basis, suffice it to say that both the parties were aware of the stand taken by them respectively and had accordingly,

RSA No.26 of 2015 (O&M)

led their evidence in support of their respective claims. No prejudice has, thus, been caused to any of the parties because of non framing of specific issue on the said score.

A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

CM No.103-C of 2015

In view of the order passed in the main appeal, the present application for staying the operation of the impugned judgments and decree passed by the Courts below during the pendency of the appeal, has become infructuous.

Disposed of as such.

January 15, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**