

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

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Regular Second Appeal No.3174 of 2015 (O&M)

Date of Decision: January 11, 2016

Suraj Bhan

...Appellant

Versus

Charan Dass Represented by LR's and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Shilak Ram Hooda, Advocate
for the appellant.

Mr. Namit Khurana, Advocate
for LR's of respondent No.1.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 09.05.2012 passed by the Civil Judge (Senior Division), Yamuna Nagar at Jagadhri, whereby the suit filed by the respondent No.1-plaintiffs for possession of 1 kanal out of the total land 6 kanals and 19 marlas comprised in Khasra No.11//19 on the basis of sale deeds dated 10.11.1995 and 13.11.1995 stands decreed, appeal against which preferred by the appellant-defendant stands dismissed by the Additional District Judge, Yamuna Nagar at Jagadhri, on 08.05.2015.

2. It is the contention of learned counsel for the appellant that the appellant-defendant is the owner in possession of the house in which he is residing and he put forth his claim on the basis of report dated 30.09.1991 Exhibit D-1, whereby in a suit for eviction which was preferred, an order of eviction was passed on 27.02.1985 Exhibit D-3 and since the houses were in existence over the said land, possession of the said land was not given.

He, therefore, contends that the findings recorded by the Courts below

cannot sustain as respondent-plaintiff is only entitled to 6 kanals of land and the remaining 19 marlas cannot be given to him in possession in pursuance to the sale deeds in his favour. Prayer has, thus, been made for setting aside the impugned judgments passed by the Courts below and for dismissal of the suit filed by the respondent-plaintiff.

3. I have heard the submissions made by learned counsel for the appellant and with his able assistance, have gone through the impugned judgments.

4. As per the evidence which has been brought on record, it is not in dispute that the respondent-plaintiff is entitled to possession over 6 kanals of land as per the two registered sale deeds dated 10.11.1995 and 13.11.1995 in his favour. It is also not in dispute that the appellant-defendant is not owner of the land on which his house is in existence as is apparent from the order of eviction passed against him on 27.02.1985 Exhibit D-3. It is also not in dispute that since the houses of the appellant-defendant and the other two brothers were on same piece of land, the said portion was not given possession of in the execution proceedings on the basis of the order of eviction.

5. The onus, thus, was upon the appellant-defendant, who is claiming adverse possession, although he is in the same breath asserting that it was on lease with him. The Courts below have rightly come to the conclusion that the plea of adverse possession is not maintainable in the light of the details, as has been dealt with by the Courts below. As regards the claim of adverse possession qua the respondent-plaintiff is concerned, suffice it to say that in the cross-examination, it has categorically been stated by the appellant-defendant that he is not in possession of any land

owned by the respondent-plaintiff in pursuance to the sale deeds. He has even gone to the extent of saying that if he is found in any portion of the land owned by the respondent-plaintiff, he would hand over the possession to the respondent-plaintiff. If that be so, the plea of adverse possession, as has been taken in the reply filed to the claim of the respondent-plaintiff, is not sustainable and has been rightly rejected by the Courts below.

6. As regards the contention of learned counsel for the appellant that the house of the appellant-defendant is not on the land of the respondent-plaintiff and he is only entitled to 6 kanals of land and not beyond that, counsel for the respondent has very fairly stated that except for the 6 kanals of land, he is not claiming any land beyond it. If that be so, the Court has to fall back on the report of the Local Commissioner, who was appointed by the trial Court and the report as submitted along with the site plan is Exhibits P-7 and P-8, according to which appellant-defendant No.2 Suraj Bhan is in unauthorised possession of an area measuring 298 square yards. It will not be out of way to mention here that no objections to the report of the Local Commissioner have been filed nor has it been challenged by the appellant-defendant.

7. In view of the above, the findings as recorded by the Courts below cannot be faulted with. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

8. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

9. In the light of the dismissal of the appeal, the application for stay i.e. CM No.7636-C of 2015, stands disposed of as infructuous.

January 11, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE