

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

RSA No.4685 of 2016 (O&M)

Date of Decision.08.09.2016

Secretary Ministry of Health Affairs, Punjab and others

.....Appellants

Vs

Shavinder Singh and others

.....Respondents

Present: Mr. P.S. Bajwa, DAG, Punjab
for the appellants.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.12122-C of 2016

For the reasons stated in the application, delay of 91 days in
filing the appeal is condoned.

Application is allowed.

RFA No.4685 of 2016 (O&M)

The appellants-defendants are aggrieved of the concurrent finding of fact whereby the suit filed by the plaintiffs for actual possession of land measuring 23 kanals 16 marals and for mesne profits to the tune of ₹15,000/- per acre per year from the date of filing of the sui till the date of actual delivery of possession, has been decreed by the trial Court and appeal filed against the same has also been dismissed.

The case set out by the plaintiffs, according to Mr. P.S. Bajwa, DAG, Punjab for the appellants, is that the land aforementioned i.e. 23 kanals 16 marals fully described in the plaint was in ownership of the plaintiffs and the defendant-State has forcibly occupied the suit property without their consent. In fact, the possession was unauthorized. He further

submits that ownership of the property has not been proved whereas on the contrary, the State found in possession since 1929 and therefore, as per the provision of Limitation Act, 1963, the Police Department has become lawful owner in possession of the suit property by way of adverse possession as the possession of the Police Department is open, continuous, peaceful and uninterrupted. He submits that the alternative plea taken before the Court below was that it was gifted by the land owners though the gift was oral and the Courts below have committed illegality and perversity in applying the provisions of Section 122 and 123 of the Transfer of Property Act. The said provisions are not applicable to the State of Punjab, thus, urges this Court for setting aside the judgments and decrees passed by the Courts below by allowing the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that the appellants-defendants have not been able to prove on record the ownership by taking up the plea of adverse possession. The plea of adverse possession taken up by the appellants itself leads to the irresistible conclusion that they accepted the ownership of the adverse party. In order to establish the adverse possession, certain ingredients of *animus possidendi*, continuous possession and particularly knowledge of owner to the world is required to be proved. Except the year of 1929, no specific date and month had been brought on record to show that the possession had been continuous. In my view, the Courts below ought not to have applied Section 122 and 123 of the Transfer of Property Act as it is not applicable to the State of Punjab in view of the promulgation of the notification but the fact remains that the appellants have failed to brought on record the revenue record indicating the factum of gift deed. It is highly improbable that a

person gifted away the property to the State.

The concurrent finding of fact is based upon preponderance of evidence and the appellants have not been able to lead any cogent evidence to make out a case for interference. For the foregoing reasons, the judgments and decrees passed by the Courts below are confirmed and the second appeal is dismissed as no substantial question of law arises for consideration.

September 08, 2016
Pankaj*

(AMIT RAWAL)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No