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

**RSA-1196-2014 (O&M)
Date of decision : 16.05.2016**

Choti and others

... Appellants

Versus

Amarjit Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amarjit Markan, Advocate
for the appellants.

Mr. Kanwaljit Singh, Senior Advocate with
Ms. Gurdeep Kaur, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? **Yes**
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the judgment and decree rendered by the lower Appellate Court, whereby the respondent-plaintiff has been declared owner of the suit property, on the basis of the adverse possession.

Mr. Amanjit Markan, learned counsel appearing on behalf of the appellants-defendants, in support of his grounds of appeal, has raised the following submissions:-

1. Suit for declaration claiming adverse possession in the absence of the specific pleadings in consonance with the provisions of Section 27 of the

Limitation Act was *ex facie* not maintainable.

2. In the absence of such plea, the plea of adverse possession, can be taken only as a defence by invoking the provisions of Article 65 of the Limitation Act.

3. The alleged writing dated 20.02.1975 executed by Hardial Singh, attorney of Albel Singh, has not been proved except son of Scribe has been examined. The aforementioned writing cannot confer a title, in the absence of the registration. Even if, the said writing had to be looked into the plea of adverse possession would have been mutually destructive.

4. The Agreement dated 20.02.1975 (Ex.P-1) does not bear the signatures of Amarjit Singh. The aforementioned agreement has not been proved through the testimony of the attesting witnesses except the examination of the son of Scribe, namely, Piare Lal Saggar.

5. PW-2 in the cross-examination admitted that he has no document to prove the possession except Ex.P-1, whereas on the contrary the jamabandi Ex.D-1 shows the possession of Hardial Singh son of Albel Singh. All these factors have not been noticed, much less, appreciated by the lower Appellate Court, thus, urges this Court to formulate the following substantial questions of law:-

1. Whether the simpliciter suit for declaration, in the absence of the adverse possession, by relying upon the agreement dated 20.02.1975 without seeking specific performance, was maintainable or not?
2. Whether the judgment and decree of the lower Appellate Court granting the injunction is in consonance with the statutory

provisions of law?

3. Whether the judgment and decree of the lower Appellate Court suffers from the illegality and perversity?

4. Whether the suit claiming adverse possession in affirmative without therebeing any pleading in consonance of provisions of Section 27 of the aforementioned Act, is maintainable or not?

Mr. Kanwaljit Singh, learned Senior Counsel assisted by Ms. Gurdeep Kaur, appearing on behalf of the respondent-plaintiff submits, that the agreement was in respect of land measuring 4 marlas being adjoining to the land of the respondent-plaintiff. The witnesses of the defendants admitted the execution of the agreement, therefore, proving of the same pales into insignificance. The writing Ex.P-1 *ex facie* shows the possession had been handed over, it is, in these circumstances, adverse possession was claimed. The lower Appellate Court being the last Court of fact and law, after appreciating the oral and documentary evidence, rendered a finding in a correct perspective, thus, urges this Court for affirming the findings, under challenge.

I have heard the learned counsel for the parties and appraised the paper book.

For the sake of brevity, the provisions of Section 27 of the Limitation Act reads thus:-

“27. Extinguishment of right to property - At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”

The suit does not envisage any prayer in consonance with the statutory provisions of law. In case, the time was not essence of agreement

dated 20.02.1975, nothing prevented the respondent-plaintiff to seek the specific performance, instead they chose to claim declaration on the basis of adverse possession. The plea of adverse possession can only be taken as a defence and not in affirmative in the absence of any prayer qua extinguishment of right as per the Section 27 of the Act. Except, *ibid*, writing, no other documentary evidence has been proved to show the possession, whereas on the contrary, jamabandi Ex.D-1 showed the possession of Hardial Singh. Setting up the plea of adverse possession tantamounts to admitting the ownership of the adverse party. For the purpose of claim of adverse possession, there has to be a continuous possession, much less, *animus possendendi*, knowledge to the whole world including the appellant-defendant, even no date, year or evidence has been proved on record to prove the same. All these factors, in my view, have not been noticed, much less, appreciated by the lower Appellate Court while granting the injunction, thus, suffers from illegality and perversity.

For the foregoing reasons, the judgment and decree of the lower Appellate Court is hereby set aside and that of the trial Court is restored. The substantial questions of law as noticed above are answered in favour of the appellants-defendants and against the respondent-plaintiff.

Resultantly, the appeal stands allowed.

16.05.2016
yogesh

(AMIT RAWAL)
JUDGE