

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

**RSA No. 5623 of 2015(O&M)
Date of decision: 11.02.2016**

Sukhraj Singh and others

...Appellant(s)

Versus

Harsa Singh and another.

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. L.S. Sidhu, Advocate,
for the appellants.

Mr. B.S. Jaiswal, Advocate,
for the Caveator-respondent No. 1.

JITENDRA CHAUHAN, J.

CM No. 13652 of 2015 and 13653 of 2015

Heard.

CMs are allowed as prayed for.

Main case

This regular second appeal has been filed by the defendants against the judgment and decree dated 06.12.2014, passed by the Additional District Judge, Tarn Taran vide which the appeal filed by the defendant/appellant was dismissed and the judgment and decree dated 21.03.2014, passed by Additional District Judge, Patti was

upheld. The suit of the plaintiff remained decreed.

In brief, Harsa Singh, the plaintiff filed a suit for possession of the part of the property shown in red colour in the site plan consisting of a room, a store-varanda and a stair case which measured 1, ½ marlas bearing Khata Khatoni No. 121/102, Khatoni No. 249 and Killa No. 148/3, situated in village Sugga, Tehsil Patti, District Tarn Taran. The plaintiff had also sought prohibitory decree restraining the defendants from encroaching upon the property of the plaintiff as detailed in the head note of the plaint. The plaintiff also claimed recovery of Rs. 50,000 from defendant No. 1 for his act and conduct in violating and resiling from agreement dated 09.02.1999. The plaintiff claimed that an oral family partition had been effected between the parties and thereafter a family partition was reduced into writing on 09.02.1999. On the basis of it, the mutation no. 1316 was sanctioned on 30.03.1999, in favour of the plaintiff regarding land measuring 10 marla. The original agreement was produced before the Revenue Authorities. The portion bearing khasra no. 148/1 came to the share of Major Singh. A separate wall was got constructed by sons of Gurnam Singh bearing khasra no. 148/2. The plaintiff was serving as Colonel and in his absence, the defendants No. 1 to 3 encroached upon the property of the plaintiff and claimed to be in possession in part of the property of the plaintiff consisting of a room, a store-veranda and a stair case fully detailed in the plaint. Despite request made by the plaintiff, the defendants continued to interfere in the land of the

plaintiff. Hence, the suit.

The defendants contested the claim of the plaintiff and took a plea that they have perfected their title by way of adverse possession. It was also pleaded by the defendants that they have purchased 5 marla land out of Khasra no. 148//3 adjoining to Khasra no. 148//4 vide agreement executed in December, 1994.

After appraisal of the evidence led by the parties, the learned trial Court decreed the suit of the plaintiff for possession of the part of the suit land. As a result, the relief of injunction was also granted in favour of the plaintiff. However, the relief of recovery of amount of Rs. 50,000/- from defendant No. 1 for violation of terms and conditions of the agreement was declined.

Feeling dissatisfied, the defendant filed an appeal before the Additional District Judge, Tarn Taran. However, the plaintiff also filed cross-objections against issue no. 3. Vide judgment dated 06.12.2004, both the appeal as well as cross-objections were dismissed. Hence, the present regular second appeal at the behest of the defendants.

It is contended on behalf of the appellants that the defendant had purchased the land from the plaintiff in December 1994. Otherwise also, the defendants have perfected their title by way of adverse possession.

Heard.

It is a suit for possession. As per family settlement, which

took place on 09.02.1999, the suit land fell into the share of the plaintiff. Mutation was also sanctioned in this regard on 30.03.1999. However, the claim of the defendant is that he purchased 5 marlas out of the Khasra no. 148//3 adjoining to Khasra No. 148//4 in December, 1994 from the plaintiff. Both the courts below have returned the findings that the execution of agreement was not proved by the defendant. Even otherwise, the agreement purported to have been executed by the plaintiff in favour of the defendant is unregistered which as per the provisions of Section 17 of Indian Registration Act does not pass any title in favour of the defendant. Thus, this Court is of the opinion that the claim of title raised by the defendant was rightly declined.

The next plea taken by the defendant was that he had perfected his title by the efflux of time. In considered opinion of this Court, in order to perfect title by way of adverse possession, one needs to prove that the possession was hostile and open to the knowledge of the owner. The plea of adverse possession taken by the defendant falls to the grounds by his own stand i.e on the one hand, he claims to have purchased the property vide unregistered agreement executed in December 1994, whereas, on the other hand, he sets up the plea of adverse possession. If the claim of the defendant is that he had purchased the property then the plea of adverse possession cannot be accepted. Both the Courts below have rightly turned down the plea of adverse possession. No question of law much less substantial question

of law is involved in the present appeal.

Consequently, the same is dismissed in limine.

11.02.2016
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(JITENDRA CHAUHAN)
JUDGE