

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

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Regular Second Appeal No.875 of 2015 (O&M)
Date of Decision: March 14, 2016

Jarnail Singh deceased through LR and another

...Appellants

Versus

Wassan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. P.S. Khurana, Advocate
for the appellants.

Mr. Nakul Sharma, Advocate
for the respondents.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 23.09.2013 passed by the Additional Civil Judge (Senior Division), Ferozepur, whereby the suit filed by respondents No.1 to 3-plaintiffs for a decree of possession of land measuring 6 kanals 16 marlas out of the land measuring 7 kanals 3 marlas as detailed in the headnote, situated in the area of village Shehzadi, Tehsil and District Ferozepur, from the appellants being unauthorised occupants of the suit land as the respondents 1 to 3-plaintiffs are owners of the suit land on the basis of the jamabandi for the year 1999-2000 onwards and khasra girdawari for the crops Sauni-2005 onwards with a consequential relief of mandatory injunction directing the appellants to hand over the vacant possession, stands decreed, appeal against which preferred by the appellants has been dismissed by the Additional District Judge-III, Ferozepur, on 21.07.2014.

2. It is the contention of learned counsel for the appellants that the predecessor-in-interest of the appellants had constructed their

residential houses in the suit land during the lifetime of the predecessor-in-interest of the respondents 1 to 3-plaintiffs about 40 to 50 years back and since then earlier the predecessor-in-interest of the appellants and now the appellants are in possession of the suit property. He contends that since the last more than 40 years, no objection has been raised by the respondents or their predecessor-in-interest with regard to the possession and construction of the house on the suit property and, therefore, now at this belated stage, such a plea as taken by the respondents, cannot be sustained, rather, it would be relinquishment of their claim over the suit property. He asserts that an oral sale was executed by the predecessor-in-interest of the respondents to the predecessor-in-interest of the appellants which has been acted upon and in pursuance thereto, the residential houses have been constructed on the suit land which cannot at this stage be permitted to be asserted by the respondents to be their ownership merely because the revenue records reflect the same. He on this basis contends that the judgments and decree as passed by the Courts below cannot sustain and deserve to be set aside.

3. On the other hand, learned counsel for the respondents submits that admittedly all through in the revenue record earlier the predecessor-in-interest of the respondents was shown to be the owner in possession of the suit land and thereafter the land has been shown to be inherited by the respondents and in this regard, he has referred to Mutation No.2810. He contends that the revenue record all through has reflected the respondents as the owners in possession of the suit land. Had there been an oral sale, as has been asserted by the counsel for the appellants, there was no reason why the same would not have been reflected in the revenue

records. The appellants, in any case, have not been able to prove such an oral sale deed before the Courts below by leading any evidence and, therefore, the bald assertion itself cannot be accepted. He, apart from that, asserts that even an application at a subsequent stage when the replication was filed by the respondents to the written statement filed by the appellants, where they have asserted that they are owners in possession on the basis of a registered sale deed, an effort was made by the appellants to convert the same into a plea of oral sale deed which has been rejected by the Court and, therefore, they cannot turn around to assert that they are owners in possession on the basis of either a registered sale deed or an oral sale deed and that apart, the plea of adverse possession as it is sought to be projected by the counsel for the appellants, although not directly, also cannot be permitted as the evidence which was sought to be led by the appellants, is beyond the pleadings and, therefore, has rightly been ignored by the Courts below. He contends that once the appellants have taken a plea of ownership over the suit land on the basis of a sale deed, they were not entitled to and they cannot take plea of adverse possession. He on this basis submits that the judgments and decree as passed by the Courts below being in accordance with the pleadings, the evidence led by the parties and law, do not call for any interference by this Court.

4. I have considered the submissions made by learned counsel for the parties and with their able assistance, have gone through the impugned judgments but do not find myself in a position to accept the contentions, as has been raised by learned counsel for the appellants.

5. Perusal of the judgments would show that the appellants initially had taken a plea of ownership over the suit land on the basis of a

registered sale deed which plea was sought to be changed by way of moving an application for amendment in the written statement where oral agreement was sought to be taken as a plea which application has been rejected and, therefore, there being no evidence on record with regard to there being a registered sale deed and further none regarding the oral sale deed, although that plea has itself been rejected by the trial Court qua this pleading, the findings by the Courts below on this plea that they have not been able to establish there ownership over the suit land, cannot be faulted with. Obviously when the appellants had taken a plea of ownership over the suit land, the plea of adverse possession could not be permitted to be taken by them and, therefore, the assertion of the counsel for the appellant deserves rejection.

6. No other point has been raised or argued by the counsel for the appellant.

7. 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 appeal, the same stands dismissed.

9. In the light of the dismissal of the appeal, all the pending applications stand disposed of.

March 14, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE