

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

RSA No.5358 of 2014 (O&M)

Date of decision:02.05.2016

Hardawari

... Appellant

Vs.

Jai Narain and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. S.K.Yadav, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.12669-C of 2016

For the reasons stated in the application, duly supported by an affidavit, delay of 757 days in re-filing the appeal is condoned.

C.M. stands disposed of.

C.M.No.12670-C of 2016

For the reasons stated in the application, duly supported by an affidavit, delay of 760 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.5358 of 2014 (O&M)

The appellant-plaintiff is aggrieved of the judgments and decrees rendered by both the Courts below, whereby, relief seeking possession of the property in dispute has been dismissed on the

ground of having lost/extinguished right in the property, in essence, the respondent-defendants have been held owners by way of adverse possession.

Mr. S.K.Yadav, learned counsel appearing on behalf of the appellant-plaintiff submits that respondent-defendants filed the counter claim claiming declaration of having become owners by way of adverse possession. Though the trial Court granted the relief but the Lower Appellate Court set aside the same. The respondent-defendants failed to prove the long, settled possession, animus possidendi being in the notice of the entire world, therefore, the defence ought to have been set aside and suit was liable to be decreed. All these facts have escaped the notice of both the Courts below, thus, substantial questions of law arise for adjudication of the present appeal.

I have heard learned counsel for the appellant-plaintiff and appraised the impugned judgments and decrees of the Courts below.

No doubt, the defendants did not plead the ingredients of Section 27 of the Limitation Act, but it is settled law that statute is to be cited and not to be pleaded. For the sake of brevity, Section 27 of the Limitation Act reads thus:-

“Section 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.”

It is a matter of record that an agreement to sell dated 14.02.1985 for a total sale consideration of Rs.20,000/- against receipt of earnest money of Rs.13,000/- was entered into and possession of the suit property was handed over. This fact has not been denied in the replication. Though the respondents have a right to seek specific performance, but the fact remains that they were put in possession, whereas, suit had been filed on 12.06.2002, i.e., beyond 12 years, therefore, the provisions of aforementioned Act squarely apply to the facts and circumstances of the present case.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below, which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 02, 2016
savita