

Regular Second Appeal No.6352 of 2014 (O&M)

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

**RSA No.6352 of 2014 (O&M)
Date of decision:14.03.2016**

Dharmender @ Dharam

... Appellant

Vs.

Chhattar Singh 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. D.K.Bhatti, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-defendant is aggrieved of the impugned judgment and decree, whereby, suit for possession was decreed by the trial Court and appeal filed against the same was also dismissed on two grounds:-

i) despite having taken plea/stand of adverse possession in the written statement, defendant did not lead the evidence.

ii) issue vis-a-vis adverse possession was not framed.

In the appeal, two applications were filed; one under Order 41 Rule 27 of the Code of Civil Procedure, seeking permission of the Court to lead evidence and another

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application under Order 14 Rule 5 of the Code of Civil Procedure, for framing additional issue. Both the applications have been dismissed.

Mr. D.K.Bhatti, learned counsel appearing on behalf of the appellant-defendant submits that at least, the Court should have framed the issue, so that plea taken in the written statement qua adverse possession could not be proved, thus, there is illegality and perversity in the judgments and decrees of the Courts below. Reasonable explanation has been given for not leading the evidence during the stage of trial. Had the opportunity been given to lead additional evidence, it would helped the Lower Appellate Court to decide the dispute between the parties. He, thus, urges this Court to formulate the substantial questions of law as culled out in the grounds of appeal.

I have heard learned counsel for the appellant-defendant and appraised the impugned judgments and decrees of the Courts below and of the view that there is no merit in the appeal, for the reasons that order closing evidence has not been assailed in the memorandum of grounds of appeal filed under Section 96 of the Code of Civil Procedure, by taking the aid of provisions of Order 43 Rule 1-A of the Code of Civil Procedure. In the absence of the same, an application under Order 41 Rule 27 of the CPC, for additional evidence was not maintainable. Once the appellant-defendant has failed to lead evidence in support of written statement regarding

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continuous, long, uninterrupted and animus possidendi, the suit for possession has rightly been decreed. Taking the plea of adverse possession, having not been proved, tantamounts to admitting title of the plaintiff. Noticing the aforementioned facts, both the Courts below after appreciating the oral and documentary evidence decreed the suit.

In view of the aforementioned observations, I do not intend to differ with the findings rendered by both the Courts below, 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

March 14, 2016

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