

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

RSA No.2208 of 2004 (O&M)

Date of decision : 08.09.2017

Sher Singh

...Appellant

Versus

Kailo and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.A. Sheoran, Advocate for the appellant.

Mr. Sandeep Singh Sangwan, Advocate
for the respondent Nos.1, 2, 4, 5 and 6.

ANIL KSHETARPAL, J. (ORAL)

Defendant No.1-appellant is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

The plaintiffs had filed a suit for possession claiming themselves to be the owner of the plot in question. It was the case of the plaintiffs that the defendant is in unauthorized possession of the property. Defendant pleaded that this plot was given by Udmi to his brother namely Richhpal for residence. Defendant further set up a plea of adverse possession on the ground that the plaintiffs have been residing in the house for more than 12 years.

After framing of the issues and allowing the parties to lead the evidence, the learned trial Court decreed the suit filed by the plaintiffs. Defendant filed the first appeal which was also dismissed after re-appreciating the evidence available on the file.

Learned counsel for the appellant has argued that it is proved

from the examination of the revenue record that the plaintiffs have been in uninterrupted possession of the suit property for more than 25 years. He has referred to the record of the consolidation where possession of the defendant is recorded. Learned counsel for the appellant, in alternative, has argued that the defendant is shown to be in possession of the property as gair marusi, therefore, the Civil Court has no jurisdiction to evict the tenant.

On the other hand, learned counsel for the respondents-plaintiffs has supported the judgments passed by the Courts below. He has submitted that there is a findings of fact in his favour which cannot be disturbed in Regular Second Appeal.

I have considered the submissions of the learned counsel for the parties and with their able assistance gone through the record.

With respect to a plea of the counsel for the appellant that defendant-appellant has perfected his title by way of adverse possession, it may be noticed that there is no pleadings available on the file to prove as to when the possession of the defendants became adverse. Mere long possession of a property does not result in perfection of the title to the party by lapse of time. An individual who wants the Court to give declaration that he has perfected his title by description of time, has to plead and prove as to when and from which time his possession became adverse, hostile, open and notorious. On the one hand, the plaintiffs have pleaded that the house in question was given by Udmi to his brother namely Richhpal, whereas on the other hand, the plea has been taken that the defendant has become co-owner by way of adverse possession.

I do not find sufficient evidence available on the file to prove

that the defendant-appellant has proved that he has perfected his title by way of adverse possession.

Next submission of the learned counsel is that the defendant is entered as gair marusi in the revenue record and, therefore, it should be declared that the Civil Court has no jurisdiction because gair marusi means a tenant.

I have considered the submission. In the revenue record, no doubt an entry of gair marusi exist, however, there is no further entry in the rent column. Simple word 'gair marusi' does not prove and establish the tenancy. The entry of gair marusi is always to be read with the column of rent which is blank in this case. There is no entry of rent in the revenue record. It is not even the case of the defendant that he was paying any rent to the owner.

The tenancy is always result of a contract between the parties. Defendant has not pleaded or proved any contract. Defendant has further failed to prove that he had ever paid any rent to the landlord.

In view of the discussion made above, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

08.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No