

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 128 of 2012 (O&M)

Date of Decision: 11.10.2017

Balwinder Singh

...Appellant

Vs.

Gulzar Singh and others

...Respondents

CORAM:-HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Munish Kumar Singla, Advocate,
for the appellant.

None for the respondents.

RAJIV NARAIN RAINA, J. (Oral)

LCR has been received. Perused.

Despite service, none of the respondents have put in appearance either personally or through counsel. Service has been noted by office to be complete since 06.08.2015. Respondents are proceeded against *ex parte*.

Notice of motion was issued on 23.09.2014 by this Court in the appeal by passing the following order:-

Learned counsel for the appellant relies on lease-deed Ex. D-2, to contend, inter alia, that once the possession of the defendants started on the basis of lease-deed, thus, permissive possession, such possession would never mature into adverse possession. Contrary observations made by both the learned courts below recording patently illegal and perverse findings, are not sustainable in law.

The appellant is the plaintiff in the suit.

Heard Mr. Munish Kumar Singla, Advocate, before passing final judgment.

It is beyond doubt that this appeal must succeed and the judgments and decree of the Courts below have to be set aside on the short ground fortified by the legal principle that once the possession of the defendants originated on a lease deed, then their possession over the suit property was permissive in nature and such possession could never mature into perfecting title by adverse possession. It could not be urged in law that possession was open and hostile to the detriment of the plaintiff. Defendants remained lease holders till the life of the lease. The suit was filed for possession.

The Courts below committed patent error in holding defendants to have become owners by way of adverse possession. That the lease deed Ex D.2 was executed on 08.11.1990 is not in dispute. The plaintiff had adduced sufficient evidence to prove the existence of the lease deed. The lease deed records that plaintiff Balwinder Singh has given the land on lease for 99 years to the defendants and/or their predecessor-in-interest.

Learned Additional District Judge, Sangrur did not read the evidence in its proper perspective. It may be noticed that since the lease deed was unregistered, therefore, the property was compulsorily registrable under Section 18 of the Indian Registration Act and may not constitute admissible evidence for non-payment of stamp duty and registration charges, but the same was produced by the defendants and, therefore, the document was admitted and could be used for collateral purposes.

The defendants did not have title of the property. Jamabandis for the years 2002-2003 Ex P.1 etc. to Ex. P.4 & P.6 and the corresponding revenue entries establish ownership of the property in dispute vesting in the plaintiff. It is inherent in the defence of adverse possession that one who

pleads that defendant is not the owner but has perfected his title by way of possession adverse to the owner which is open and hostile for 12 years and more the burden is on him to discharge by clear evidence and as a result of above discussion, the appeal succeeds and is allowed and the judgment and decree in appeal is set aside. The suit for possession is decreed.

(RAJIV NARAIN RAINA)
JUDGE

11.10.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>