

RSA No.1671 of 2016 (O & M) and
RSA No.5096 of 2016 (O & M)

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

RSA No.1671 of 2016 (O & M)
Date of decision :26.09.2017

Sallan (since deceased) through her LRs ...Appellant

Versus

Hari Kishan and others ...Respondents

RSA No.5096 of 2016 (O & M)

Sallan (now deceased) through LRs ...Appellant

Versus

Parth Singh (since deceased) through LRs ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Vashisth, Advocate
for the appellant.

ANIL KSHETARPAL, J.(Oral)

CM No.13242-C-2016

Application is allowed.

Deficiency in the Court fee has been made good. Delay if any
is condoned.

CM No.13243-C-2016

For the reasons stated in the application, which is duly
supported by an affidavit, delay of 28 days in re-filing the appeal is
condoned.

Application is allowed.

CM No.13244 of 2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 9 days in filing the appeal is condoned.

Application is allowed.

RSA No.1671 of 2016 (O & M)

Defendants-appellants are in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below.

One appeal is arising out of the suit filed for possession whereas the second appeal is filed by Smt. Sallan (now deceased) against dismissal of the suit filed by her seeking declaration that she has become owner by way of adverse possession.

It is not in dispute that in the previous litigation Smt. Sallan was held to be in possession, however, she failed to prove her ownership. Her possession was protected from forcible dispossession.

Both the Courts have concurrently found that Smt. Sallan (now deceased) has failed to prove that she has perfected her title by lapse of time. The only claim of Smt. Sallan is that she is in continuous hostile and adverse possession and she has protected her title whereas Padam Singh etc. are claiming the property on the basis of ownership.

Hon'ble Supreme Court of India has held that adverse possession can only be used as shield and not as a sword. As per judgment of Hon'ble the Supreme Court of India in '**Gurudwara Sahib vs. Gram Panchayat, Village Sirthala and another', (2014) 1 SCC 669** has held that the plaintiff cannot maintain such a suit. Even the Division Bench of this Court in the case titled as **Vijay Bhawar and others vs. Ajaib Singh**

(deceased) through his LR, 2015 (3) RCR (Civil) 604 has held to the same

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effect. Therefore, the appeal filed by Smt. Sallan i.e. RSA No.1671-2016 is liable to be dismissed on this ground itself.

RSA No.5096 of 2016 (O & M)

Plaintiffs had filed a suit for possession on the basis of title and in compliance of decree passed while deciding Civil Suit No.211 of 2004.

Learned counsel for the appellant has vehemently argued that the present suit is barred under Order 2 Rule 2 CPC.

It is not in dispute that pleadings of the earlier suit i.e. Civil Suit No.211 of 2004 have not been brought on file. It is further not in dispute that neither any issue was claimed nor examined by the Courts below. In this Court, this issue cannot be permitted to be raised for the first time. Even otherwise, once the pleadings of the earlier suit have not been filed, this Court is unable to examine the argument raised by learned counsel. It is fundamental that if a defendant wants to raise a plea that second suit is barred under Order 2 Rule 2, the pleadings in the earlier suit must be filed.

In view thereof, there is no scope for interference.

Hence, both the appeals are dismissed.

26.09.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No