

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

105

RSA No.5164 of 2013 (O & M)
Date of Decision:20.11.2017

Karam Singh

...Appellant

Versus

Nasib Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.S. Sullar, Advocate
for the appellant.

Mr. Rakesh Dhiman, Advocate
for respondent Nos.1 and 2.

ANIL KSHETARPAL, J.(Oral)

Defendant-appellant is in regular second appeal against the concurrent findings of facts arrived at by the Courts below.

Plaintiffs had filed a suit for possession by way of ejection of defendant No.1 in respect of a plot (*bara*) described in the plaint. Plaintiffs had claimed that their father-Prita Ram was owner in the possession of *bara* and defendant No.1 has unauthorizedly occupied the same.

On the other hand, defendant pleaded that Shri Prita Ram, the original owner had sold the *bara* in question to defendant No.1 vide unregistered sale deed dated 27.12.1974 for Rs.910/-.

Both the Courts below after appreciating the evidence available on the file, decreed the suit filed by the plaintiffs. It was held that the alleged unregistered sale deed dated 27.12.1974 does not confer any title on the defendant.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below.

Learned counsel for the appellant has submitted that the defendant-appellant is

atleast entitled to protect his possession in view of Section 53-A of the Transfer of Property Act i.e. part performance of the agreement to sell. He has further submitted that the possession of the defendant-appellant since 1974 is proved, therefore, he has perfected his title by way of adverse possession.

As regards the argument that the defendant-appellant is entitled to protection under Section 53-A of the Act, it is pertinent to note here that neither this plea was taken before the Courts below nor any issue was framed. It is not the case of the defendant in the pleadings that he is in possession of the property in part performance of the contract. For the first time in this Court, appellant cannot be permitted to raise a contention, which is neither pleaded nor advanced before the Courts below at the time of arguments.

Next submission of learned counsel is that the defendant-appellant has perfected his title by way of adverse possession. Both the Courts have examined this issue in detail and have found that the defendant has failed to prove that his possession is adverse or he has perfected his title by way of adverse possession. Defendant-appellant has failed to fulfill the ingredients of acquiring title by way of adverse possession.

In these circumstances, there is no good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Hence, this regular second appeal is dismissed.

20.11.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes
Whether Reportable : No