

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1772 of 2015 (O&M)
Date of Decision: 27.09.2017

Avtar Singh

... Appellant

Versus

Tarlochan Singh

... Respondent

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

Present: Mr. Sukhdip Singh Brar, Advocate,
for the appellant.

Mr. Rakesh Gupta, Advocate,
for the caveator-respondent.

RAJIV NARAIN RAINA, J.(Oral)

1. When this appeal came up for hearing on September 04, 2017 Mr. S.S. Brar, learned counsel for the appellant was not present. The order reads:-

“Mr. Gupta submits that the plaintiff made admission in previous suit that defendant was in possession of the property in dispute. Such finding became final. In a subsequent suit, he has shifted his stand and resiled from the admission, which is impermissible. Both the Courts below have held as much and consequently there is no life in this appeal.

However, since Mr. S.S.Brar, Advocate, is not present, I adjourn the matter to 27.09.2017 to hear him on this point.

To be shown in urgent list for final disposal.”

2. I have heard Mr. S.S. Brar and Mr. Rakesh Gupta, Advocate appearing on caveat for the respondent.

3. The property was alleged to have originally belonged to the Punjab Wakf Board. The Wakf Board filed a suit against the appellant Avtar

Singh and others for possession of the land in dispute. In that suit a statement was made by Avtar Singh that he was not in possession of the suit land and the possession was in the hands of Manohar Singh and Sons from whom the present respondents claim rights of possession over the disputed property. The suit was dismissed against the Board holding that Manohar Singh and Sons had become owners by adverse possession. That order attained finality.

4. This admission Mr. Gupta submits is binding on the appellant and he cannot wriggle out of his own statement since the admission is the best evidence and to make it stronger it was made in previous Court. The findings recorded in the previous suit by the Wakf Board operate as *res judicata* against the appellant in the present suit and, therefore, both the Courts have not erred in holding that the plaintiff was not in possession over the disputed property and dismissed the suit for permanent injunction against the defendant restraining them from interfering in the possession of the plaintiff.

5. I would be loathe to differ with the firm finding of fact duly supported by the admission of the appellant himself and as a result, this second appeal is dismissed as devoid of substance.

(RAJIV NARAIN RAINA)
JUDGE

27.09.2017

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Whether speaking/reasoned Yes

Whether reportable No