

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

RSA No. 4035 of 2016

Date of decision : 12.07.2017

Balwanti

...Appellant

versus

Girraj Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vishawjeet Singh, Advocate
for the appellant

RITU BAHRI, J.

This regular second appeal is directed against the concurrent findings of facts recorded by both the Courts below whereby the suit of the plaintiffs-respondents (herein after to be referred as 'the respondents') for possession, was decreed.

Brief facts of the case are that the respondents were claiming themselves to be owners in possession of the agricultural land comprised in Khewat No. 69, Khatauni No. 80, rectangle No. 12, Killa No. 7/1 (4-0) situated within the revenue estate of village Jorkhera, Tehsil and District Palwal. This property was earlier given for cultivation to Smt. Late Ashi, Smt Gyasi, Balwanti, Sukhwanti, Bhado, Somoto, Smt. Bharpai and Smt. Jasoda, daughters of Jiasee in the year 1976, on lease by their grand father Shri Chokha being related to each other. The suit land along with Killa No. 10 (8-0) of Rectangle No. 11 was given on license and entries in the jamabandi of the year 1977-78 reflected the possession as “Ba Sarah

Malkan Ba Wajesh Bhaichara” and late Ashi and others continued to cultivate this land with the permission of their grand father. The names of Ashi and Jaisee is continuously reflected even in the latest jamabandi in the column of rent i.e “Ba Sarah Malkan Ba Wajesh Bhaichara” was deleted by the revenue authorities Ashi and Jaisee died more than 20 years ago and the respondents-defendants were claiming to be their legal heirs. They filed suit No. 367 of 20.08.1991 against defendant No. 7 to 19 for correction of revenue entries which was dismissed as withdrawn on 09.05.1997. Therein, they filed another suit No. 1081/1997 captioned as Girraj Singh and others vs. Smt. Sarti and others, which was dismissed, vide judgment and decree dated 13.10.2005 and the appeal against the said judgment was also dismissed on 01.12.2006. They being rightful owner of the suit land are entitled to recover the possession as predecessors in interest of the defendants were inducted in possession of the suit land as licensee only.

The suit filed by the plaintiffs was decreed by the learned trial Court on the ground that the jamabandi's which were placed on record by the plaintiffs makes it crystal clear that they are owners in possession of the suit land. The plaintiffs are claiming the possession on the basis of title. On the other hand, defendants are claiming possession on the basis of adverse possession, which they could not prove, as their own witness i.e D.W.3 admits the suit property to be the ancestral property. Once the possession of the defendants never became adverse, the action of the plaintiffs was held not to be barred by limitation. For this, reference has been made to a case

Chatti Konati Rao v. Palle Venkata Subba Rao (SC) 2011 (1) CCC 699

and Gurduwara Sahib vs. Gram Panchayat Village Sirthala (SC) 2013 (5)

RAJ 464

The learned trial Court further held that the suit is not barred by order 2 Rule 2 CPC, as argued by learned counsel for the defendants, as the earlier suit, which was dismissed was declaration and permanent injunction as consequential relief and the present suit is for possession and strength and on the basis of different plea that defendants had licensee in the suit property as “Ba Sarah Malkan Ba Wajesh Bhaichara”. For this, reference has been made to a judgment of Hon'ble the Supreme Court in a case of ***Coffee Board v. Ramesh Exports (P) Ltd, 2014(6) SCC 424*** wherein in para 12 of the judgment, it has been observed that in order to determine whether a suit is barred under Order 2 Rule 2 CPC, the Court must examine the cause of action pleaded by the plaintiff in his plaints filed in the relevant suits and both the plaints must be read as a whole to identify the cause of action.

This finding of facts recorded by the learned trial Court was rightly upheld by the Lower Appellate Court, as in the present case, the present-appellant in her cross examination admits the suit property to be the ancestral property and on the other hand, defendants-respondents were claiming the adverse possession. The defendants have been miserably failed to prove that they were in adverse possession of the suit land and the suit land was barred by Order 2 Rule 2 CPC.

Accordingly, the concurrent findings of facts recorded by both the Courts below does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

12.07.2017
G Arora

(RITU BAHRI)
JUDGE

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