

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

**RSA No. 617 of 2014(O&M)
Date of Decision: 14.02.2017**

Anil Yadav **... Appellant**
vs.

Administrator, Gram Panchayat, Kanina **... Respondent**

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. Sandeep Kumar Yadav, Advocate
for the appellant.**

ANITA CHAUDHRY, J.

This is plaintiff's regular second appeal against the judgment and decree passed by the first Appellate Court, whereby it allowed the appeal of the defendant and reversed the judgment and decree dated 01.10.2011 passed by the trial Court, decreeing the suit.

The plaintiff filed a suit seeking perpetual injunction against the defendant and questioned the legality of notice dated 16.01.2006 whereby he had been asked to hand over the vacant possession of the suit property. It was claimed that the suit property was earlier owned by Mohan Dass Chela Harjidass and on account of the services rendered, he had given the same to the ancestors of the plaintiff and defendant has no right, title or interest in the suit property.

The defendant denied the ownership of Mohan Dass. It was claimed that the suit property is owned by the defendant and the plaintiff has illegally encroached upon the same and notice was rightly issued to the plaintiff.

Issues were framed and both the parties led the evidence.

The trial Court decreed the suit vide judgment dated 01.10.2011. The defendant went in appeal and succeeded there. The appellate Court reversed the findings of the trial Court and dismissed the suit vide judgment dated 17.10.2013.

Dis-satisfied with the same, the plaintiff has filed the instant regular second appeal.

I have heard learned counsel for the appellant and have gone through the record carefully.

The trial Court held that both the parties had failed to prove their ownership in respect of the suit property and the plaintiff, who is admittedly in possession of the suit property, had every right to protect his possession and the defendant had gone wrong in issuing the notice seeking possession of the suit land.

The appellate Court reversed the findings and held as under:-

“15. Now, it is well settled that the plaintiff must succeed or fail his own case and he cannot advantage of weakness of the defendant's case to a decree. The plaintiff has to stand his own legs and has to prove his case by leading cogent and convincing evidence admissible in law to succeed in his claim. Now, the case of the plaintiff that previously Mohan Dass Chela Harji Dass was owner of the suit property and said Mohan Dass had given the suit property to the ancestors of the plaintiff after being feeling happy and the plaintiff is continuing in possession of the suit property for

the last 70/80 years since the time of his ancestors. Now, on the file there is no iota of evidence whatsoever that previously Mohan Dass Chela Harji Dass was owner of the suit property and had built up a temple for his personal use and for doing pooja etc. Further, there is no evidence on the file whatsoever that said Mohan Dass had given the suit property to the ancestors of the plaintiff, who as per plaintiff used to serve Mohan Dass and Mohan Dass after feeling happy had given the suit property to the ancestors of the plaintiff. Now, as per plaintiff, Mohan Dass was owner of the suit property and he had given the suit property to the ancestors of the plaintiff after feeling happy. Thus, the possession was permissive possession and being so cannot ripen into title by way of adverse possession. It has nowhere pleaded that when possession of the plaintiff became hostile to said Mohan Dass and it has neither been pleaded nor there is evidence to that effect that possession of plaintiff or for that matter of his ancestors was open, continuous, hostile and to the knowledge of the true owner by asserting title by the ancestors of the plaintiff or the plaintiff. Perusal of evidence adduced by the plaintiff shows that when plaintiff stepped into witness box as PW4, he has simply stated that he through his ancestors has been in adverse possession of the suit property.

16. Now, the plaintiff in the suit has assailed the service of notice bearing no.17 dated 16.01.2006 Ex.D2/B served by the defendant upon the plaintiff. Vide this notice, the defendant has asked the plaintiff to hand over the vacant possession of the suit property. Now, this notice, no

doubt, shows that the defendant admits the possession of the plaintiff over the suit property, however, as per case of the defendant, the plaintiff had illegally occupied the suit property.

17. Now, the case of the defendant is that the defendant has taken the suit property on rent from Hargovind, where one Government Girls Primary School used to be run. Now, on the file, document Ex.D2/D has been produced wherein said Hargovind son of Murlidhar has specifically written to defendant that the defendant had taken his building on rent for running a Government Girls High School, wherein a request has been made to pay rent in advance as per resolution no. 1680 dated 24.7.1972. The document Ex.DW1/B which has been written by Headmistress, Government Girls High School, Kanina, District Mohindergarh to Administrator, Municipal Committee, Kanina regarding handing over the building of Government Girls High School, Kanina to Administrator, Municipal Committee, Kanina. Now, when plaintiff Anil Yadav, stepped into witness box, he in his statement has not denied this fact that in the suit property, a Primary School used to be run. Now, this evidence on the file gives an air of credence to the case of the defendant which shows that the plaintiff is unauthorized of the suit property and the defendant has merely issued a notice bearing no.17 dated 16.1.2006 Ex.D2/B to vacate the suit property. In judgment titled as Walter Louis Franklin (dead) through LRs Vs. George Singh (dead) through LRs, reported in LJR 1997(2)(SV) page no.15(supra) the possession was not unauthorized, thus this judgment is of no help to the

case of the plaintiff.”

The plaintiff has to stand on his own legs. From the findings reproduced above, it is apparent that no evidence was adduced by the plaintiff to prove as to how he came in possession of the suit property and failed to substantiate his plea regarding previous ownership of Mohan Dass over the suit property. Plaintiff was claiming rights from Mohan Dass. He is not related to him. When stepping into the witness box, he claimed that the land was his ancestral property. It was not shown that the possession of the plaintiff was continuous, hostile and to the knowledge of the true owner. It is well settled that the plea of adverse possession is not available to the plaintiff and the same can be raised as a defence. The plaintiff in his statement had not denied the existence of the school over the suit property. The defendant, on the other hand, produced the letter Ex.DW1/B vide which the possession of the school was handed over to it. It was rightly held that the possession of the plaintiff over the suit property was unauthorized and the defendant can get the same vacated through due course of law for which they had rightly issued notice dated 16.01.2006. There is no illegality or perversity in the findings returned by the appellate Court while reversing the judgment of the trial Court. It cannot be said that the same are based on misinterpretation of evidence. The appeal is dismissed in limine.

14.02.2017

Jiten

Whether speaking/ reasoned

Whether reportable

(ANITA CHAUDHRY)

JUDGE

Yes/ No

Yes/ No