

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 3552 of 2017 (O&M)

Date of decision : July 11, 2017

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Hari Singh and others

.....Appellants

Versus

Pardeep

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. K.K Saini, Advocate for the appellants.

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RITU BAHRI, J.

The present regular second appeal has been filed against the judgment dated 26.4.2017 passed by the Additional District Judge, Bhiwani whereby the appeal against the judgment and decree dated 18.4.2014 passed by the Civil Judge (Junior Division), Bhiwani was dismissed. Vide the judgment of the trial Court the suit of the plaintiff/respondent for possession has been decreed.

Plaintiff/respondent had filed a suit for possession of land measuring 500 square yards (100' x 45') bounded as under:

East : Railway Lies

West : Land of the plaintiff

North : Khasra No.126/11

South : Eicher Tractor Agency

marked with letters ABCD shown in red colour in the site plan attached situated near Railway Crossing (phatak), Loharu Road, Bhiwani (hereinafter referred as suit land) with a prayer for consequential relief restraining the defendants/appellants from raising any construction or interfering into the peaceful possession of the plaintiff/respondent over the adjoining land.

As per the averments in the suit, Khasra No.126/11 was in ownership of Radhey Shyam and others vide judgment and decree dated 14.2.1995 and mutation No.10830. Vide family settlement, plaintiff/respondent had obtained a decree in case No.19 decided on 02.05.2002 of suit land and thereafter on basis of family settlement and said decree, the plaintiff had become absolute owner of khasra No.126/11 (8-8) and in this regard mutation was sanctioned on 12.10.2002 in his favour. The plaintiff/respondent produced mutation No. 14149 Ex.P-5 to show that Radhey Shyam, Sushil Kumar, Ashok Kumar and Pawan Kumar suffered a decree in favour of Pardeep Kumar to the extent of 14/15 share by way of decree dated 2.5.2002 passed by SC Jain, Presiding Officer, Lok Adalat while dealing with the case No. 19 DC which was subsequently registered with Sub Registrar. Plaintiff/respondent Pardeep Kumar became the owner of the entire suit land measuring 8 kanals 8 marlas including the suit land.

The defendants-appellants claimed that they had become owners by way of adverse possession which is established from documentary evidence Ex.P-1 & Ex.P-2 judgment and decree in which the defendants-appellants-were found to be in possession and the respondent-plaintiff, Radhy Shyam, Pawan Kumar, Sushil Kumar etc. erst while owners were restrained to interfere in their possession. However, the defendants-

appellants failed to prove the necessary ingredients to establish adverse possession. A compromise Ex.P-5 was entered into by both the parties to the suit in which the defendants-appellants admitted ownership of Radhey Shyam, Pawan Kumar, Sushil Kumar etc. and settled that out of 500 square yards of land, appellants-defendants will become owner of 138.12 square yards. However, this compromise was never acted upon.

The trial Court observed that the defendants have not proved their plea of adverse possession by any cogent evidence. Further more adverse possession has not been pleaded from the specific date and specific time from which the factum of adverse possession is pleaded and which has to be proved specifically by the party who alleges.

As per the observation of the appellate Court, the appellants-defendants have claimed adverse possession over the suit land and it amounts to admission of title of the opposite party i.e the plaintiff-respondent in this case. Reliance was placed on a judgment in the case **2017(1) LJR 2015 Darshan Singh vs. Kashmir Singh and others.** It was further observed that mere long possession cannot clothe a party with the ownership rights as has been held by Hon'ble the Supreme Court in **Dharamrajan and others vs. Vallimmal and others, 2008 (1) RCR (Civil) 278.** Compromise Ex. P-5 cannot be used for the purpose of determining title of either party or possession of other party. However, this compromise can be used for collateral purpose to see that even if appellants-defendants were in adverse possession, the same was interrupted on 8.2.2002 when the compromise was written by the parties. So the defendants-appellants had admitted the title of the plaintiff-respondent. As such, the suit of the plaintiff-respondent had been rightly decreed by both the Courts below.

Hence, in view of all that has been discussed above, there is no substantial question of law which arises for consideration in the present regular second appeal.

Dismissed.

July 11, 2017

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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No