

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

**Regular Second Appeal No.3662 of 2017(O&M)
Date of Order:17.07.2017**

Arvind Kumar Sethi

..Appellant

Versus

Surinder Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjeev Kumar Arora, Advocate,
for the appellant.

ANIL KSHETARPAL, J.

This regular second appeal has been filed by defendant against the judgment and decree passed by the trial Court, dated 26.03.2013, confirmed in appeal by judgment and decree dated 15.02.2017.

Brief facts of the case are that the plaintiff had filed a suit for possession by partition of ½ share of the house measuring 180 sq. yds. It was claimed by the plaintiff that plaintiff-defendant have jointly purchased the suit property vide different sale deeds dated, 19.04.1984, 26.04.1984, 23.04.1984, 23.04.1984, 26.04.1986 and 19.04.1984. It was further pleaded that plaintiff and defendant are in joint possession of the house. Plaintiff had prayed for partition of the aforesaid property as there was some dispute between the parties.

Defendant apart from taking objections of maintainability and limitation, asserted that the property is not joint between the parties, rather it was only of the defendant. It is the defendant, who had purchased the suit

property, vide sale deeds dated 19.04.1975, 26.04.1984 and 23.04.1984. It was further pleaded by the defendant that construction on the suit property was exclusively carried out by him in the year 1988 and he has been exclusively residing in the suit property since 1988. Defendant further claimed that he has become owner of the demise house, having perfected title by way of adverse possession.

After framing of the issues, parties were allowed to led evidence.

Learned trial Court after appreciating the evidence available on the file, decreed the suit filed by the plaintiff and passed a preliminary decree. Appeal filed by the defendant-appellant also met with the same fate. Learned first appellate Court once again after re-appreciating the evidence on file, agreed with the judgment and decree passed by the trial Court.

I have heard counsel for the appellant at length and with the able assistance, has gone through the paper book

Learned counsel for the appellant has contended that the construction was raised by the parties jointly. Since plaintiff failed to prove the same, therefore, it must be assumed that the construction exclusively was carried out by the defendant.

The appellant has not chosen to challenge the findings of the Court below with respect to the property being joint between the parties. The only argument raised by the appellant is that plaintiff has failed to prove that construction was raised jointly by the parties.

I have gone through the judgments of the Courts below. Defendant had in fact pleaded that he had exclusively constructed the house without the help of the plaintiff and, therefore, entire construction belongs

to him. Both the Courts below after appreciating the evidence, recorded a finding that defendant has failed to prove that it was he who exclusively constructed the house. Defendant has also failed to prove bills for purchase of building material. The defendant had, in fact, had no substantial evidence to prove that it was he who had constructed the entire house. Both the Courts have appreciated the evidence available on the file and found as a matter of fact that defendant has failed to prove the case set up in the written statement.

Another argument raised by counsel for the appellant is that it is the defendant who has been residing in the demise house since 1988 and he is in continuous uninterrupted possession of the house. He further claims that in view thereof, he has become owner by way of adverse possession, having perfected his title by lapse of time.

I have considered the argument. It has been noticed by the learned first appellate Court that plaintiff has failed to plead and establish the facts necessary for proving his adverse possession. Plaintiff has not led any evidence to prove that as to when his possession become hostile, uninterrupted and peaceful against a co-owner. Even otherwise, once both the parties are co-owner then every co-owner is deemed to be in possession of the property unless a co-owner is able to establish and prove ouster of the other co-owner, a co-owner cannot claim to have become owner by way of adverse possession.

Taking into consideration the material available on record and the judgments passed by the Courts below, which are not shown to be perverse, I do not find any reason to interfere with the concurrent findings of fact arrived at by both the courts below. The appellant has not been able

to establish any substantial question of law or the ground to interfere in the Regular Second Appeal under Section 41 of the Punjab Courts Act. Hence the Regular Second Appeal is ordered to be dismissed.

July 17, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No