

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

RSA No.1584 of 1988 (O&M)

Date of decision : 17.01.2018

Krishan Lal

...Appellant

Versus

Manphool Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. N.D. Achint, Advocate for the appellant.

Mr. Anil Rathee, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff had filed a suit for possession of a plot comprised in Khasra No.339/3-min on the basis of the registered sale deed dated 22.10.1973 executed by Dev Parkash.

The defendant contested the suit and pleaded that Dev Parkash had in fact purchased the property from Dwarka Parshad vide sale deed dated 20.05.1960. It was pleaded that in fact if both the sale deeds are compared, properties situated on all the four sides do not match/tally.

The defendant further pleaded that his house is in existence for the last 16 years and he is not in illegal possession, however, in alternative, the defendant pleaded that if he is found in illegal possession on some area,

he has become the owner by way of adverse possession.

Both the Courts below compared the sale deeds dated 20.05.1960 and 22.10.1973 and recorded a finding of fact that the area sold through the aforesaid two sale deeds is not comparable and description of the properties given on all the four directions/sides do not match with each other.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

Learned counsel for the appellant has very fairly admitted that of course the details of the properties located on all the four directions do not match/tally with what was further sold vide sale deed dated 22.10.1973. He has frankly admitted that the details of the property on all four directions as given in the sale deed dated 20.05.1960 are entirely different than the details of the property given in all the four directions in the sale deed dated 22.10.1973. However, he has submitted that with the passage of time, properties on all the four directions have changed.

I have considered the submissions. However, this Court is unable to agree with the learned counsel for the appellant for the obvious reason that the owners of the property of four direction can change but not the existence of street. In the sale deed dated 20.05.1960, on the eastern side, there is a 40 feet street whereas in the sale deed dated 22.10.1973, house of Manphool has been depicted. The street is shown towards northern side. Hence, it is conclusively established that the properties sold through the sale deed dated 20.05.1960 and purchased by the Vendor of the plaintiff

was different.

Learned counsel for the appellant has further argued that the defendant had pleaded the adverse possession and, therefore, it will be deemed that the defendant has admitted the ownership of the plaintiff. The plea of adverse possession, as noticed while noticing the facts, is only in the alternative. The defendant has specifically pleaded that he is owner in possession. The plea of the defendant is not only based upon adverse possession. Hence, there is no substance in the argument of the learned counsel.

Learned counsel has further wanted to rely upon the certain alleged admissions made by the defendant while appearing in the witness-box in the oral evidence. It is well settled that in view of the documentary evidence, oral evidence cannot be preferred. Still further, one line in the cross-examination cannot be picked up in isolation to the remaining and taken as an admission. The entire statement has to be read as a whole to arrive at a conclusion.

In view thereof, there is no scope for interference with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

17.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No