

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

**RSA No.985 of 1990 (O&M)
Date of Decision.17.11.2018**

Risal (since deceased) through LR'sAppellant

Vs

Kundan (deceased through LR's) and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. C.B. Goel, Advocate
for the appellant.

Mr. Sushil Sheoran, Advocate
for respondents No.1 to 3.

Mr. Akshay Kumar Goel, Advocate
for respondent No.9.

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AMIT RAWAL J. (ORAL)

C.M. No.4026-C of 2018

The application for impleading the legal representatives of deceased Kundan, respondent No.1 and deceased-Jagmal, respondent No.3 is allowed subject to all just exceptions and the legal representatives of respondent No.1 and 3 are ordered to be brought on record for the purpose of adjudication of present appeal.

The amended memo of parties is taken on record and the registry is directed to put the same at appropriate place.

C.M. No.905-C of 2018

Application is allowed.

With the consent of parties, the appeal is taken for final hearing today itself.

Main case

The present regular second appeal is directed against the

judgments and decrees of the Courts below whereby suit for claiming declaration and ownership of the suit property by way of adverse possession has been dismissed.

It was alleged that the plaintiff had been in cultivating possession of the suit land continuously since the time of his predecessor in interest. Defendant No.11 to 18 filed the ejectment application and the same was allowed vide order dated 30.08.1987, which remained unexecuted giving cause to the plaintiff to file suit.

The trial Court dismissed the suit on the ground that the plaintiff has not been able to prove the continuous possession, so did the lower Appellate Court.

Mr. C.B. Goel, learned counsel appearing on behalf of the appellant submitted that no doubt the suit for setting up the claim of adverse possession in affirmative may not be maintainable but provisions of Section 27 of the Limitation Act would definitely come to his rescue, as the defendants had already extinguished the right of ownership, thus, urges this Court for setting aside the judgments and decrees under challenge.

Mr. Shushil Sheoran, learned counsel appearing on behalf of respondent No.1 to 3 and Mr. Akshay Kumar Goel, Advocate representing respondent No.9 submitted that in view of law laid down by Hon'ble Supreme Court in **Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and another 2013(4) RCR (Civil) 703** while interpreting provisions of Section 27 and Article 65 & 66 of the Limitation Act, it has been held that a person cannot seek a declaration on the premise that his possession has matured.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Goel, for, the suit aforementioned was not maintainable. It is not mentioned anywhere that the plaintiff along with declaration had sought injunction. A person, who is in long and settled possession, cannot be dispossessed except in due course of law but in the absence of such claim, no relief can be granted. The ratio spelled out in judgment cited supra has not been controverted.

As an upshot of my finding, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 17, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No