

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

Date of decision: 13.12.2018

1.

RSA No. 492 of 1995(O&M)

Mohinder Singh and others

.....Appellants

VERSUS

Daljit Singh and others

.....Respondents

2.

RSA No. 493 of 1995(O&M)

Mohinder Singh and others

.....Appellants

VERSUS

Daljit Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. H.S. Grewal, Advocate for the appellants.

Mr. Onkar Singh, Advocate for respondents No.1 to 3.

REKHA MITTAL, J. (Oral)

CM No.12853-C of 2018

Prayer in this application is for bringing on record legal representatives (in short 'LRs') of Harbhajan Singh (since deceased) – respondent No.3.

Heard.

In view of averments made in the application supported by an affidavit of Daljit Singh, respondent No.1, the application is allowed and

persons mentioned in para 2 of the application are allowed to be brought on record as LR's of deceased Harbhajan Singh subject to just exceptions and for the purpose of present lis.

Amended memo of parties is taken on record.

Disposed of accordingly.

RSA No.492 and 493 of 1995

This order will dispose of RSA Nos.492 and 493 of 1995 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No.492 of 1995.

Mohinder Singh and others filed a suit for declaration that plaintiffs No.1 and 2, Ravinder Singh Purewal – defendant No.8 sons of Sucha Singh and plaintiffs No.3 to 6 widow and sons of Raghbir Singh (since deceased) son of Sucha Singh are owners in possession of land measuring 3 marlas comprising killa No.15//4/3, as per jamabandi for the year 1981-82 situated in the area of village Nangal Jiwan and Allowal with all rights appurtenant thereto along with one taur (open site) bearing No.5 detailed in headnote of the plaint and the same was decreed by the trial Court vide judgment and decree dated 09.01.1992. The appeal preferred by contesting defendants No.1 to 7 was allowed by the Additional District Judge, Jalandhar whereby judgment and decree dated 09.01.1992 were set aside and suit filed by the appellants/plaintiffs claiming ownership in possession of suit land was dismissed.

Counsel for the appellants would inform that the appellants/plaintiffs claimed ownership over the suit land on two grounds namely on the basis of title and in the alternative raised the plea that they have become owner of suit land being in adverse possession thereof.

Counsel for the appellants, in response to a query, would fairly concede that there is no document of title proved on record in order to establish the appellants to be owner in possession of suit land. So far as their claim of ownership on the basis of adverse possession is concerned, they cannot file a suit for declaration to claim ownership on the basis of adverse possession as plea of adverse possession is available as a shield and not a sword. In this context reference can be made to judgment of Hon'ble the Supreme Court **Dagadabai (dead) by LRs Vs. Abbas @ Gulab Rustum Pinjari, Civil Appeal No.83 of 2008 decided on 18.04.2017** and judgment of this Court **Vijay Bhawar and others Vs. Ajaib Singh (deceased) through his LR, RSA No.2561 of 1985 decided on 08.12.2014.**

This apart, raising such contradictory/self-destructive pleas are not allowed to be raised by a plaintiff. On the contrary, since the plaintiffs have raised the plea of adverse possession, it amounts to admission on their part that the contesting party is owner of the suit land of which they have become owners by way of adverse possession. Analyzed from any angle, I do not find an error much less illegality/perversity in the judgment passed by the Appellate Court, warranting intervention.

For the foregoing reasons, the appeals fail and are accordingly dismissed, leaving the parties to bear their own costs.

DECEMBER 13, 2018

'D. Gulati'

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no