

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

**RSA No.1339 of 2001
Date of Decision:08.01.2018**

Ram Saran and another

...Appellants

Versus

Dhara Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.C.B.Goel, Advocate for the appellants.
Mr.S.S.Mor, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiffs-defendants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Although the suit filed by the plaintiffs, seeking declaration that they have become owners of the suit property by way of adverse possession, is not maintainable as held by the Hon'ble Supreme Court in the case of **Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and others, (2014) 1 SCC 669**, however, even otherwise the plaintiffs have failed to establish that they have become owners by way of adverse possession.

The plaintiffs have filed a suit with regard to 1/3rd share of the land measuring 47 kanals and 16 marlas, belonging to one Udhmi, who was one of the co-owner along with two others.

Both the courts below have concurrently found that the plaintiffs are also co-owners in the joint Khewat. Learned counsel for the appellants has also not disputed this position.

Every co-owner is deemed to be in possession of every part of the land. A co-owner in possession of land, more than his share, is always considered to be holding such possession on behalf of the other co-owners.

A co-owner can claim adverse possession only once it is proved that other co-owner had been ousted from the possession. A very strong evidence is required to be led by a co-owner to prove the ouster of other co-owner.

Both the courts below have recorded a finding of fact that the plaintiffs have not pleaded at what point of time their possession became adverse to Udhmi, a co-owner. Plaintiffs have also failed to establish that their possession was adverse and hostile to Udhmi or his successors. The plaintiffs have further failed to establish that Udhmi or his successors were ever ousted from the land.

In view of discussion made above, there is no good ground to interfere with the impugned judgments passed by the courts below. However, since the plaintiffs are in settled possession, they shall be entitled to a decree for permanent injunction against forcible dispossession. The defendants shall be entitled to seek possession on the property after getting the same partitioned, in accordance with law.

Dismissed.

08.01.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No