

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

RSA No. 2226 of 2010 (O&M)  
Date of decision : May 01, 2018

Tarsem Singh and others

..... Appellants

v.

Gurbachan Singh and others

..... Respondents

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**CORAM : HON'BLE MR. JUSTICE AJAY TEWARI**

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Present : Mr. Sudeep Mahajan, Advocate  
for the appellants.

Mr. Vipin Mahajan, Advocate  
for the respondents.

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**Ajay Tewari, J (Oral)**

**C.M No.6754-C of 2010**

This is an application for impleading the L.Rs of appellant-  
Amrik Singh. His LR's are already appellants No.3 and 4 herein.  
Consequently, this application is allowed subject to just exceptions.

**RSA No.2226 of 2010**

This appeal has been filed against the concurrent judgments of  
the Courts below decreeing a suit for possession filed by the respondents.

Both the Courts below held that the appellants were not able to  
prove their plea of adverse possession and consequently decreed the suit.

The ground taken by counsel for the appellants is that neither the  
respondents anywhere pleaded that they were owners nor did they lead any

evidence to this effect and consequently the mere admission by the appellants could not clothe the respondents with ownership.

On the other hand, counsel for the respondents has argued that though the exact words are not mentioned as such in the plaint yet in their statements the plaintiffs had stated that their father was the owner and in the first line of his cross examination, appellant No.1 had specifically accepted that their father was the owner. As per the learned counsel, in this view of the matter, atleast the respondents could not now turn around and state that they had harboured any confusion about the real state of affairs or that they did not know the case that they were supposed to meet.

The second argument of counsel for the appellants is that in any case the appellants had been able to prove their claim of adverse possession. In this connection, the Courts have held that the revenue record showed the appellants and their predecessors in possession as mortgagees and if the appellants wanted to succeed in their plea of adverse possession they should have got the revenue entries corrected and only then could it be taken that they had taken conscious steps to oust the respondents. The main argument raised by the counsel is that once the entries showing the appellants in possession had continued for almost 40 years it did not lie in the mouth of the respondents to state that they had no knowledge that they were mortgagees on the land.

In my opinion, this argument is misconceived. Adverse possession can only be accepted if the person in possession proves that he had asserted a title hostile to that of the owner and had exhibited the intention to oust the owner. Looked at from this angle, it was incumbent upon the appellants to have proved that the respondents knew that there was

no mortgage and yet allowed the appellants to continue in possession. Once they were able to prove that it may have been said that they had perfected their title because then it could have been held that the respondents well knew that possession of the appellants was unauthorized and having known that, they did not take any step for a period of 12 years to reclaim the possession. No such evidence has been led by the appellants. In the circumstances, both the Courts below have rightly held that they have not been able to establish their claim of adverse possession. Consequently finding no merit this appeal is dismissed.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

May 01, 2018  
'kk'

( AJAY TEWARI )  
JUDGE

**Whether speaking/reasoned:**  
**Whether Reportable:**

**Yes/No**  
**Yes/No**