

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

**RSA No.1577 of 2013 (O&M)
Date of Decision: 06.12.2018.**

Surjit Kaur etc.

... Appellants

Versus

Nirmal Kaur etc.

... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Advocate for
Mr. Dhruv Mittal, Advocate
for the appellants.

Mr. G.S. Nagra, Advocate
for respondent Nos.1 to 4.

ANIL KSHETARPAL J. (ORAL)

Defendants-appellants are in Regular Second Appeal against judgment passed by learned first appellate court decreeing the suit for possession and reversing the judgment passed by the trial court. Plaintiff along with his sister was owner in possession of certain land and sold 19 Kanals 11 Marlas of land to defendants. Out of Khasra No.5//11/2 which was of 1 Kanal 11 Marlas only, 11 Marlas was sold. However, on account of mistake of the revenue authorities mutation was sanctioned with respect to the entire land of Khasra No.5//11/2 measuring 1 Kanal and 11 Marlas. Plaintiff thus filed a suit, of course, pleading that defendants have entered into possession of the unsold area three years ago. Learned trial court dismissed the suit on the ground that defendants have perfected their title by way of adverse possession after recording a finding that due to error by the revenue authorities wrong mutation has been entered. However, learned first appellate court has reversed the judgment of the trial court.

Learned counsel for the appellants has submitted that possession of the defendants-appellants is proved from the date of sold 02.05.1975 and therefore,

since their possession has remained peaceful and hostile till filing of the suit, therefore, they have perfected their title by way of adverse possession. He further submitted that the defendants became co-sharer with the plaintiff and therefore decree for possession could not be passed.

Learned counsel for the appellant has read over the plea taken in the written statement. It is apparent that defendants have taken a plea that they entered into possession at the time of execution of the sale deed. Obviously at that time the possession was handed over and it was permissive. Defendants have failed to prove as to when their possession became adverse, hostile which is the requirement of proving that someone has perfected his title by way of adverse possession. Once, defendants-appellants entered into permissive possession it was for the defendants to prove that when their possession was became hostile. Hence, this court does not find any substance in the first argument.

With regard to second argument it will be noticed that plaintiff and his sister were exclusive owner of certain piece of land and they sold 19 Kanals and 11 Marlas duly identified by their khasra numbers which are 5 in number to the defendants. In such circumstances the purchaser cannot claim to have become co-owner with his vendors who were exclusive owners of the property.

In view thereof there is no ground to interfere.

Appeal is dismissed.

06.12.2018
rekha sharma

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No