

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

120+217

**CM No.15525-C of 2018 in/and
RSA No.3534 of 2013 (O&M)
Date of Decision : 10.10.2018**

Neelam and others

..... Appellants

Versus

Sant Lal and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Rakesh Nagpal, Advocate and
Mr. Rajesh Sethi, Advocate
for the applicants-appellants.

Mr. Sanjiv Gupta, Advocate
for respondent No.1.

AJAY TEWARI, J.

CM No.15525-C of 2018

This is an application for additional evidence to place on record the copy of judgment and decree dated 21.09.2017.

Counsel for the applicants-appellants has argued that this judgment and decree has come into being during the pendency of this appeal.

I have gone through the same and I find that it has no relevance to the controversy between the parties because this was a suit filed by tenant against the applicants-appellants (as well as the respondents) from interfering in his possession as tenant.

Consequently, the application is rejected.

RSA No.3534 of 2013

This appeal has been filed against the concurrent judgments of the Courts below decreeing a suit filed by respondent No.1.

The case of respondent No.1 was that he was co-owner of the property with the predecessor-in-interest of the appellants (being brothers) and he sought partition.

The case of the appellants on the other hand was that firstly their predecessor was owner and secondly even if it was held that the respondent No.1 was a co-owner they had become owners by adverse possession. To prove their adverse possession they examined an employee of the Electricity Department as DW-1 who proved that the electricity bills were in the favour of predecessor-in-interest of the appellants. They also examined one Mulkh Raj as DW-2 who stated that he was the tenant of the property in dispute and was paying the rent to the predecessor-in-interest of the appellants. They also examined one Mohinder Kumar as DW-3 who just testified that the predecessor of the appellants was in adverse possession since 1969.

Both the Courts below having decreed the suit the appellants are before this Court. They also filed an application bearing **CM No.15525-C of 2018** for additional evidence where the said Mulk Raj (who had appeared as DW-2) had filed a suit for permanent injunction restraining the appellants (as well as the respondents) from interfering in his possession as tenant. The plea taken is that this decree having coming to being during the pendency of this case should be admitted into evidence. Apart from that learned counsel for the applicants-appellants

has argued that the trial Court dismissed the suit on the wrong premise that the possession of a co-sharer can never be adverse to that of another co-sharer. Even if this argument is correct, the issue before the Court is whether in the present case the appellants have proved that their possession was hostile to that of the co-sharer and whether that hostile possession has continued for more than 12 years.

Though other grounds were taken but before me only the ground of adverse possession was urged.

In my considered opinion, the mere fact that the electricity bills are in favour of one co-sharer or that one co-sharer has let out the property and is receiving the rent is not enough to prove that their possession had become hostile.

Keeping in view the entire conspectus of facts, I am not persuaded to hold that the findings of the Courts below are based on no evidence or on such a perverted mis-reading as to render them liable for interference in second appeal.

Appeal stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

10.10.2018

pooja sharma-I

**(AJAY TEWARI)
JUDGE**

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No