

RSA-1918-2016

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

**RSA No. 1918 of 2016 (O&M)
Date of Decision: July 16, 2018.**

HAMEED AND ORS.

..... APPELLANTS.

Versus

FAJRI

..... RESPONDENT.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sanjeev Kumar Bawa, Advocate,
for the appellants.

LISA GILL, J.

CM No. 5091-C of 2016

Heard.

In view of the averments in the application as well as the arguments addressed, delay of 72 days in re-filing of the appeal is condoned.

Application is allowed.

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The appellants are aggrieved of the dismissal of their counter claim in part in the suit filed by the respondent/plaintiff vide judgment and decree dated 12.03.2015 passed by the learned Civil Judge, Senior Division, Mewat as well as judgment and decree dated 06.07.2015 passed by the learned Additional District Judge, Mewat, upholding the findings of the learned trial Court.

Brief facts necessary for the adjudication in this case are that the plaintiff/respondent filed a suit for permanent injunction for restraining the defendants/appellants from interfering in her peaceful possession over the plot

measuring 05 Marla, situated within the revenue estate of Village Kaliyaka, Tehsil Tauru, District Mewat. It was pleaded that the plot in question was purchased by the plaintiff vide registered sale deed bearing No. 639 dated 13.07.2010 from its owner namely Shiv Charan (PW2). Mutation in this respect was sanctioned on 30.07.2010. After purchasing the suit property, the plaintiff constructed a boundary wall around the suit property. Plot of the appellants/defendants is adjoining the suit property. They forcibly demolished the boundary wall and were interfering in the peaceful use and occupation of the plaintiff/respondent by putting Malba and by tethering cattle over the same. FIR No. 357 dated 22.10.2010 under Sections 447, 506, 34 IPC was registered against the appellants/defendants as well. It is further pleaded that the defendants intended to encroach upon the other part of the suit property by raising construction over the same in order to merge the said portion with their adjoining plot.

Upon notice, the defendants/plaintiffs were proceeded against exparte at the first instance on 14.02.2011. However the said order dated 14.02.2011 was recalled. Written statement-cum-counter claim was filed by the appellants. It was pleaded that the suit property was within the Angan of the appellants house. They were in actual, physical and continuous possession over the suit property since 26.01.1990. Their possession over the suit property it was pleaded was adverse to the plaintiff being continuous, hostile, uninterrupted and without any break. It was thus prayed that counter claim be decreed. Replication was filed. The following issues were framed by the learned trial Court.

1. Whether the plaintiff is entitled for relief of permanent

- injunction on the ground mentioned in the plaint?OPP
2. Whether the suit of the plaintiff is not maintainable?OPD
 3. Whether the defendants are entitled for decree of permanent injunction on the basis of counter claim?OPD
 4. Whether the plaintiff has filed false and frivolous suit?OPD
 5. Relief.

Evidence was led by both the parties. Learned trial Court on considering the facts and circumstances of the case, dismissed the suit filed by the plaintiff while allowing their counter claim in part by holding the defendants/appellants to be in possession of the suit land, thus entitled for a decree of permanent injunction. However, their counter claim for declaring them to be owners of the suit property by way of adverse possession was dismissed while concluding that they had failed to prove their possession to be adverse.

Appeal filed by the appellants was dismissed by the learned Additional District Judge, Nuh vide judgement dated 06.07.2015. Aggrieved therefrom, this appeal has been filed.

Learned counsel for the appellants submits that possession of the appellants since 26.01.1990 is duly proved on record. PW2-Shiv Charan the previous owner of the plot in question stated that he had constructed the boundary wall and the plot was thereafter sold to the respondent/plaintiff whereas the plaintiff in her suit stated that it was she who had constructed the boundary wall. Therefore, the said fact itself proves the case set up by the appellants/defendants. Therefore, the appellants should be declared to be owners in possession of the suit property. It is thus prayed that this appeal be allowed

and their counter claim be allowed throughout.

I have heard learned counsel for the appellants and have gone through the file as well as the record furnished in Court today. In my considered opinion, counter claim of the appellants claiming ownership on the basis of adverse possession has been rightly dismissed. This is so for the reason that there is no evidence on record except the bald statement of appellant No.1 Hameed-DW2 to the effect that he has been possession of the property in question since 26.01.1990. There is no evidence on record to indicate when and how they came in possession of the suit property and when their possession over the suit land became adverse and hostile qua the actual owner. The plaintiff-respondent is admitted to be owner of the plot on the basis of a sale deed dated 13.07.2010, mutation of which was entered on 30.07.2010. Much stress has been laid by learned counsel for the appellants on the statement of the previous owner of the property namely Shiv Charan-PW4, a copy of which has been furnished in Court today. I have gone through the statement of Shiv Charan-PW2. He has stated about encroachment upon the suit property by the appellants after execution of the sale deed. He denied the suggestions that encroachment was made by the appellant at any earlier point of time. Therefore, argument raised by learned counsel on the basis of this statement is untenable, hence rejected.

Learned counsel for the appellants is unable to produce any material/document on record to ascertain as to how the present appellants/defendants came in possession of the property in question. There is nothing on record to show when their possession became hostile. Accordingly, learned courts below rightly negated the claim of the appellants while observing

that mere bald plea that the appellants were in possession of the suit property since 26.01.1990 without being substantiated by any evidence on record is not enough to prove their possession to be adverse, hostile and continuous since twelve years which would entitle them to be declared owners of the property by way of adverse possession.

No other argument has been raised.

Learned counsel for the appellants-defendants is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgments dated 12.03.2015 and 06.07.2015 are well reasoned judgments rendered after proper appreciation and consideration of the evidence on record. They call for no interference by this Court.

This appeal is accordingly dismissed with no order as to costs.

July 16, 2018
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(LISA GILL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No