

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

1. RSA No.1944 of 2016 (O&M)
Date of decision : 09.02.2018

Mohinder Singh

...Appellant

Versus

Gurmit Singh

...Respondent

2. RSA No.2086 of 2016 (O&M)
Date of decision : 09.02.2018

Mohinder Singh

...Appellant

Versus

Gurmit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kewal Krishan, Advocate for the appellant

Mr. B.S. Mann, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

By this judgment, two Regular Second Appeal bearing
Nos.1944 and 2086 of 2016 shall stand disposed of.

The plaintiff-appellant has filed the abovesaid two connected
appeals, one against the dismissal of the suit and second against allowing
the counter claim for possession filed by the defendant.

The plaintiff filed a suit for permanent injunction claiming that he is in uninterrupted possession of the land owned by the Government and the defendant is wrongly claiming that the land was allotted to him.

On the other hand, defendant pleaded that he through his predecessor was in possession of the land since 1960 and the plaintiff was given possession of the land as a licensee for a short time, however, the plaintiff is refusing to hand-over the vacant possession. On this basis, counter claim was also filed. Learned trial Court decreed the suit for permanent injunction and dismissed the counter claim.

Two first appeals were preferred by the defendant-respondent. Learned First Appellate Court after re-appreciating the evidence available on the file recorded a finding that Santa Singh was recorded as a owner of the property in the revenue record in the jamabandi for the years 1962-63, 1971-72, 1976-77, 1981-82, 1985-86, 1990-91 and 1995-96.

The Court further noticed that the plaintiff-appellant is, for the first time, shown in possession in the cultivating column only in the year 1995 as *Gair Marusi*. The First Appellate Court further noticed that in the previous litigation, the plaintiff was not party. The Court further noticed that the plaintiff has failed to prove that his adverse possession has perfected the title by lapse of time. Hence, the First Appellate Court held that it is the defendant-respondent who is owner and hence, entitled to the possession of the disputed land.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below as well as the record.

Learned counsel while referring to Ex.PX has submitted that once predecessor of the defendant was not held to be owner, therefore, that judgment operates as res judicata.

This Court specifically asked the learned counsel for the appellant that whether the earlier litigation was between the same parties or between the different parties. He frankly admitted that the plaintiff-appellant was not party to the aforesaid litigation. This being the position, the earlier judgment cannot be operate as res judicata.

Learned counsel for the appellant has further submitted that the plaintiff-appellant is at least being shown in the possession since 1995 and since the defendant-respondent has failed to prove any deed of licence, therefore, his counter claim ought to have been dismissed.

This Court has considered the submission, however do not find any substance therein. It is not the case of the plaintiff-appellant that he is tenant over the land. The plaintiff-appellant does not claim title in the property on the basis of any document. His only claim is that he has perfected his title by way of adverse possession. For proving the adverse possession, the appellant was to assert his claim or while replying to the counter claim that from which date, his possession became adverse and when entered into the possession forcibly. The ingredients of adverse possession are missing in the present case.

In these circumstances, this Court does not find any good ground to interfere with the findings of fact arrived at by the First Appellate Court.

Both the Regular Second Appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

09.02.2018
Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No