

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

RSA No.2257 of 2016 (O&M)

Date of decision:06.12.2018

Devi Ram and others

... Appellants

Vs.

Duli Chand and others

... Respondents

RSA No.4379 of 2017 (O&M)

Devi Ram and others

... Appellants

Vs.

Duli Chand and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Johan Kumar, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.5876-C of 2016 in RSA No.2257 of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 5 days in re-filing the appeal is condoned.

C.M. stands allowed.

C.M.No.5877-C of 2016 in RSA No.2257 of 2016

The application is allowed, subject to all just exceptions. Legal representative of appellant no.2-Man Singh as mentioned in the application

is ordered to be brought on record for the purpose of prosecuting the present appeal.

C.M.No.11362-C of 2017 in RSA No.4379 of 2017

For the reasons stated in the application which is duly supported by an affidavit, delay of 394 days in re-filing the appeal is condoned.

C.M. stands allowed.

C.M.No.11364-C of 2016 in RSA No.4379 of 2017

The application is allowed, subject to all just exceptions. Legal representative of appellant no.2-Man Singh as mentioned in the application is ordered to be brought on record for the purpose of prosecuting the present appeal.

Main Appeals

This order of mine shall dispose of two Regular Second Appeals bearing nos.2257 of 2016 and 4379 of 2017 at the instance of defendants no.1 to 3 directed against the concurrent findings of facts and law whereby the suit filed by the respondent-plaintiffs for correction of the revenue entry, has been decreed.

The respondent-plaintiffs asserted that by virtue of a decree dated 03.12.1969, Ex.P3, alongwith defendants no.1 to 3, became co-owners under the statutory provisions of Punjab Occupancy Tenants (Vesting of Proprietary Right) Act, being occupant tenants, in other words, they were declared as tenants and ejectments proceedings filed by the landlord were

dismissed. However, the entry in the revenue record did not reflect the correct position and was not in tandem with the decree. The name of father, of defendants no.1 to 3, Ram Chand was shown to be in cultivation column.

Defendants opposed the suit and alleged that father of the defendants, Ram Chand, forcibly dispossessed the father of the plaintiffs from the suit land on 01.12.1975 and since then, they had been in exclusive possession including the share of the plaintiffs and thus, they have become the owners by way of adverse possession.

On the basis of pleadings of the parties, the trial Court framed as many as nine issues including the issue of Relief. The plaintiffs examined Duli Chand as PW1, whereas, the defendants examined four witnesses and brought on record the revenue record i.e. Ex.D1 to Ex.D7.

On preponderance of the evidence noticing the possession of the defendants, declined the plea of adverse possession and decreed the suit. The appeal taken before the Lower Appellate Court was also dismissed.

Mr. Johan Kumar, learned counsel appearing on behalf of the appellants submitted that sole ground on which both the Courts below rejected the plea of defendants qua adverse possession by holding that possession of the co-owners/co-sharers vis-a-vis other co-sharers was that of trustees, therefore, not entitled to plead ouster. The aforementioned finding, according to him is against the ratio decidendi culled out by the Hon'ble Supreme Court in **Parsinni (dead) by LRs vs. Sukhi 1993(3) RRR 681**. In fact, the appellants has established on record the ousters. Even the

judgment rendered by the Hon'ble Supreme Court in **Md. Mohammad Ali vs. Jagadish Kalita and others 2004(1) SCC 271** relied upon by the trial Court laid down the law in tandem with ratio in Parsinni's case (supra).

I have heard the learned counsel for the appellants, appraised the judgments and decrees as well as record of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Johan Kumar.

No doubt, co-sharer always take up the plea of adverse possession by projecting an ouster of other co-sharer but it has to be specific, clear, to the knowledge of the whole world and animus possidendi should also be in existence. In order to establish the aforementioned ingredients, it was obligatory upon the defendants to place on record the khasra girdawari. Jamabandi placed on record do not establish the exclusive possession. The finding of the trial Court with regard to exclusive possession is a passing reference by referring to the jamabandis as this Court in **Ibrahim alias Dharambir vs. Sharifan alias Shanti 1979 PLJ 469** held that limitation to espouse the cause would not be from the date of entry but when the threat of dispossession is extended. In the absence of evidence brought on record, the Court had no other occasion but to decline plea.

The findings of facts and law, thus, cannot be faulted with.

No substantial question of law arises for adjudication of the present appeals.

The appeals are dismissed.

(AMIT RAWAL)
JUDGE

December 06, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No