

RSA-2364-2016 (O&M)

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

**RSA-2364-2016 (O&M)
Date of decision : 13.12.2018**

Dalip Singh

... Appellant

Versus

Balbir Singh (deceased) through LRs and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajit Kumar Sharma, Advocate for
Mr. R.D. Yadav, Advocate for the appellant.

AMIT RAWAL, J.

The appellant-plaintiff-Dalip Singh has not been successful in defending the counter claim filed in a suit for declaration and permanent injunction on the basis of the long and settled possession.

It was alleged that the plaintiff along with family members had been using the house for about 40 (forty) years without any hindrance or obstacles. The defendants being the neighbors of the plaintiff, were very clever and quarrelsome and wanted to forcibly grab the land, shown in the red colour in the site plan.

The defendants opposed the suit and denied the nature of the property to be ancestral as the claimed by the plaintiff, but stated the suit property, vide gift deed dated 12.06.1945, was gifted to Jai Dei, their mother from their father Jhabar Singh. The site plan attached to the gift deed showed the portion in red colour as 7'1" x 11'9". The said gift deed was witnessed by Kanhiya Lal, who was none-else, but real brother of plaintiff's grand father-Ishwar, therefore, the plaintiff was bound by the gift deed and sought the mandatory injunction by closing the window in the ground floor and first floor as well as injunction qua forcible interference in the portion shown in the red colour.

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The plaintiff examined four witnesses and brought on record various documentary evidence. The defendants also examined six witnesses and brought on record site plan, report of building expert, gift deed as well as one sale deed.

Learned counsel for the appellant submitted that both the Courts below have abdicated in decreeing the counter-claim as the counter-claimant had not been able to establish the ownership. The trial Court has not taken into consideration the pleading qua adverse possession taken in the written statement and non-framing of the issue cannot be a bar for asserting claim of adverse possession in defence.

I am afraid the aforementioned argument is not sustainable as the report of the building expert revealed that '*chabutra*' of the building was in the house of the defendants and had been used by the defendants as part of their house, whereas age of the opening of the windows was stated to be six years, which connected with his absence since July 2003.

In view of this matter, the findings of the Courts below that the plaintiff had raised the construction in the absence of the defendants is correct appreciation of law as the report remained un-controverted.

In this view of the matter, there cannot be any illegality or perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination.

Resultantly, the regular second appeal is dismissed.

13.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**