

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

**RSA No.1298 of 2015 (O&M)
Date of Decision.05.12.2018**

Gurmeet Singh

....Appellant

Vs

Gurnam Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harkaran Singh, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

C.M. No.4809-C of 2017

The application for impleading the legal representatives of deceased-appellant No.1 is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record for the purpose of adjudication of the present appeal.

RSA No.1298 of 2015

The appellant-plaintiff No.1 in Civil Suit No.162 of 2010 (hereinafter called the first suit) and defendant No.1 in civil suit No.24 of 2006 (hereinafter called the second suit) is in regular second appeal against the judgment and decree of the lower Appellate Court and as well as declining of the relief of injunction by the trial Court, much less, injunction granted against them in the second suit.

The plaintiffs in the first suit claimed ownership and possession of gair mumkin property bearing khasra No.159(1-5), 160 (2-7) total land measuring 3 kanals 12 marlas with consequential relief of permanent injunction restraining the defendants from interfering into lawful and peaceful possession and the plaintiffs in

the 2nd suit sought restraint order against the defendants from demolition of wall shown B-C in red colour in the site plan.

The plaintiffs in the first suit asserted that plaintiff No.1 and 2 had 1/3 share each in the aforementioned property inherited from their father Gurdarshan Singh, plaintiff No.3 to 6 had 1/3rd share inherited from Harkewal Singh, husband of plaintiff No.3 and father of plaintiffs No.4 to 6.

The defendants opposed the suit by raising the objection that predecessor-in-interest of plaintiffs No.3 to 6 filed a suit bearing No.506 of 1945 against Tehal Singh, predecessor-in-interest of defendants for possession of 1 kanal 4 marlas bearing khasra No.1475 as per jamabandi for the year 1943-44. As per the judgment and decree dated 23.07.1946, Tehal Singh became the owner in possession of Khara No.1475. In view of the consolidation, Khasra No.1475, as per the missal haqiqat of 1955-56 was assigned new khasra numbers 159(1-5), 160(2-7). After his death, property was succeeded by his successors and mutation bearing No.3349 in this regard was also sanctioned and so on and so forth.

Defendants had already constructed boundary wall along with the disputed property to the extent of 1 kanals 4 marlas and were in possession whereas house of the plaintiffs was on the eastern side of khasra No.159. The plaintiffs were neither in possession of the suit land to the extent of 1 kanal 5 marlas bearing khasra No.159 but only defendants.

Both the parties brought on record extensive revenue record in support of their respective pleadings.

The trial Court on the preponderance of evidence held that plaintiff could not take the plea of adverse possession in affirmative with regard to khasra No.159 and did not grant the declaration but with regard to khasra No.160 held them to be owners in possession, thus, the second suit of the plaintiffs was decreed whereby the appellant-plaintiff, who was defendant in the second suit along with co-defendants was restrained from demolishing the wall. One appeal was filed by the plaintiff, which was dismissed.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that the plaintiffs have established the ownership of the property by way of long and settled possession and therefore, declaration qua khasra No.159 (1-5) ought to have been granted.

I am afraid the aforementioned argument is not sustainable, in view of the settled law laid by Hon'ble Supreme Court in *Gurudwara Sahib v. Gram Panchayat Village Sirthala and another 2013 (4) R.C.R. (Civil) 703* where plea of adverse possession in affirmative as per Article 65 and Section 27 of the Limitation Act cannot be taken. The defendants have also miserably failed to take the plea of adverse possession in suit for injunction as the issue with regard to ownership was not raised. It is settled law that even if the issue is not framed, parties can still lead evidence, that can be looked into. No such evidence was led. For pleading adverse possession, specific date and year of possession, which was in the knowledge of the whole world including the true owner, is required to be proved through direct and cogent evidence but are conspicuously absent in this case.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 05, 2018

Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No