

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

RSA No.4268 of 2016 (O&M)

Date of decision:03.12.2018

Gurdev Singh

... Appellant

Vs.

Surjit Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Jaideep Verma, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant being plaintiff in civil suit bearing No.166 of 1996 and defendant in civil suit bearing No.345 of 1998 which were consolidated as in the first suit declaration and ownership was sought on the basis of adverse possession and in second suit, defendant set up a plea of adverse possession as defence, whereby, the plaintiff had claimed the possession. First suit of the plaintiff has been dismissed and that of the defendant qua possession has been decreed. The Lower Appellate Court affirmed the findings of the trial Court.

Mr. Jaideep Verma, learned counsel appearing on behalf of the appellant submitted that the trial Court abdicated in not deciding issue no.1 framed in second suit claiming possession as defendant, no doubt, could not have claimed the plea of adverse possession in affirmative, in the first suit, but there is no finding with regard to the witnesses examined in support of

issue no.1, in second suit.

I am afraid the aforementioned argument is not sustainable, for, findings on pages 35 to 37 of the trial Court had dealt with all the witnesses of the appellant who could not support the pleadings of the plaintiff and defendant in second suit with regard to date, year and month of the possession except the voter card, electricity bills etc. Even the date of construction converting the plot into a building much less expenditure incurred on the construction, like bills of cement, wood etc. have not come on record. No doubt, the defendant can always take the plea of adverse possession by taking the aid of Article 65 of Limitation Act but the animus possidendi has to be not only against true owner but against the whole world.

The aforementioned view of mine is derived from the the ratio decidendi culled out by the Hon'ble Supreme Court paragraphs 11 and 12 of **Ram Nagina Rai and another vs. Deo Kumar Rai (deceased) by LRs and another 2018(5) RCR (Civil) 398**. For the sake of brevity, paragraphs 11 and 12 read thus:-

“11. Thus, it is important to assess whether such intention to dispossess is apparent to the actual owner or not. The intention of the adverse user must be communicated atleast impliedly to the actual owner of the property. His hostile attitude should be open to the knowledge of the real owner. It follows that the intention and possession of the adverse possessor must be

hostile enough to give rise to a reasonable notice to the actual owner.

12. Applying the test of *nec vi, nec clam, nec precario* i.e., 'without force, without secrecy, without permission' as an established test for finding adverse possession, we find that the defendants have not proved their possession to be adverse to that of the real owner inasmuch as they entered into possession as licensees to begin with and there is nothing on record to show as to when the permissive possession became adverse to the interest of the real owner. 'Animus possidendi' is one of the ingredients of adverse possession, and unless the person possessing the property has the requisite hostile animus, the period of prescription does not commence. Virtually, the defendants are required to prove the possession to be adequate in continuity, adequate in publicity and to adequately show that their possession is adverse to that of the true owner. It must start with wrongful dispossession of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

The physical fact of exclusion, possession and animus possidendi to hold as owner, in exclusion to the actual owner, are the most important factors to prove adverse possession.

A person pleading adverse possession has no equities in his favour. Since he is trying to take away the rights of the true

owner, it is for him to clearly plead and establish all the facts necessary to establish his adverse possession.”

The plaintiff-defendant has miserably failed to comply with the aforementioned ingredients. In such circumstances, the Court below had no other option but to decree the second suit.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed. Consequently, the application seeking condonation of delay of 413 days in re-filing the appeal is also dismissed.

(AMIT RAWAL)
JUDGE

December 03, 2018
savita

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