

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

**RSA No.5602 of 2016 (O&M)
Date of Decision.01.11.2018**

Mohinder Singh (since deceased) through LRs ...Appellant
Vs

Pritam Singh and another ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Pankaj Jain, Advocate
for the appellant.

-:-

AMIT RAWAL J. (ORAL)

The appellants/plaintiffs, successor-in-interest of Mohinder Singh and defendants in counter-claim are aggrieved of the concurrent finding of fact whereby the suit claiming permanent injunction by way of adverse possession has partly been decreed and the appellants/plaintiffs are ordered to be evicted in counter-claim.

The plaintiffs instituted the suit claiming ownership on the basis of efflux of time as per the provisions of Article 65 of the Limitation Act, on account of that their possession had been open, notorious to the respondents-defendants/counter-claimants, much less, the *animus possidendi*. However, possession was stated to be 45 (forty five) years old.

The defendants opposed the suit by denying the claim of the plaintiffs and stated that Mohinder Singh was an employee and had been given a permissive possession to live in the premises, thus, status was of a licensee. The possession also sought by setting up a counter claim.

On the preponderance of evidence, suit as indicated

above was dismissed and the counter-claim was allowed. The appeal laid before the lower Appellate Court was also dismissed.

Mr. Pankaj Jain, learned counsel appearing on behalf of the appellants-plaintiffs submitted that no doubt plea of adverse possession in affirmative as per the ratio decidendi culled out in **Gurdwara Sahib Vs. Gram Panchayat, village Sirthala and another 2014 (1) SCC 669** cannot be taken but as defence can always be taken in counter-claim or in suit. In order to establish the ownership, defendants brought on record two documents Ex.D1 and Ex.D10, Sanad and settlement. As per the testimony of the witnesses, property described in the Sanad was in other village than the one in dispute. None of the witnesses of settlement Ex.D10 or the signatories on it have been examined/proved, thus, failed to discharge onus qua the ownership. In such circumstances, the eviction could not have been ordered in the counter-claim. The ingredients of Section 101 of the Indian Evidence Act remained unproved, thus, identity of the property as per the aforementioned documents remained a mystery and urges this Court to interfere as there is illegality and perversity.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Jain. Taking plea of adverse possession tantamounts to admitting title of the defendants, as identity of the property of which possession is being claimed remained undisputed. No doubt, the appellants-plaintiffs have taken defence of adverse possession but have not been able to lead any evidence of the year, month, thus, all the pleas were vague. In order to establish the

adverse possession, all these aforementioned ingredients are required to be proved. This view of mine is derived from the ratio decidendi culled by Hon'ble Supreme Court in *Ram Nagina Rai and another Vs. Deo Kumar Rai (deceased) by LRs and another 2018 (5) RCR (Civil) 398*. Concededly, the appellants-plaintiffs cannot be permitted to take the plea of adverse possession in affirmative, in view of *Gurdwara Sahib's* case (supra). Perhaps there would have been force, had there been pleadings that defendant had extinguished their title as per the provisions of Section 27 of the Limitation Act. Proof of the documents Ex.D10 and D-11 pales into significance, thus, argument of Mr. Jain has not been able to bring the case within the realm of illegality and perversity in order to enable this Court to form a different opinion than the one already arrived at.

As an upshot of my finding, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 01, 2018

Pankaj*

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No