

RSA No.4439 of 2015 (O&M)

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

RSA No.4439 of 2015 (O&M)
Date of decision: 06.03.2018

Jagir Singh and others

.....Appellants

versus

Bhagwant Singh Fauji and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Ajay Kumar Gupta, Advocate, for the appellants.

RAMENDRA JAIN, J. (ORAL)

Unsuccessful plaintiffs have preferred this regular second appeal against judgment and decree of the First Appellate Court dated 13.05.2015, affirming the judgment and decree of the trial Court dated 29.08.2013 dismissing their suit for declaration and perpetual injunction.

Briefly stated, appellants are co-sharers in the suit land detailed in para No.1 of the judgment of the trial Court along with respondents. According to them, respondents left the village around 50 years back, where the suit land is situated. Therefore, in their absence, suit land was occupied by them and since then the appellants were coming into continuous, uninterrupted and hostile possession of the same within the knowledge of the respondents and, thus, they had become owner of the suit land by way of adverse possession by efflux of time being their possession over the same more than 12 years.

The trial Court after holding trial, dismissed the suit of the plaintiff vide judgment and decree dated 29.08.2013.

Being aggrieved, appellants approached the First Appellate

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Court, but remained unsuccessful as their appeal too was dismissed vide judgment and decree dated 13.05.2015.

Learned counsel for the appellants, praying for withdrawal of CM-954-C of 2018 under Order 23 Rule 1 CPC and relying upon ***Kirpa and others v. Dharma and another***, 2006(3) R.C.R.(Civil) 597 (P&H) inter alia contends that respondent No.1 as DW1 categorically admitted that they have left the village in 1958 and never visited the village after 1965. From the above admission of the respondents, it is evident that the respondents never remained in possession of the suit land nor ever cultivated it. Both the Courts below failed to appreciate that revenue record throughout from the year 1979-80 till the date of filing of the suit was in favour of the appellants and, therefore, believing their version, both the Courts below ought to have decreed the claim of the appellants in toto.

Having given thoughtful consideration to the submissions made by learned counsel for the appellants, this Court finds that the instant appeal is completely devoid of any merit for the reasons to follow.

Appellants have staked their claim of title over the suit land on the basis of adverse possession, therefore, issue No.3 regarding maintainability of the suit has rightly been decided against the appellants by the trial Court and affirmed by the First Appellate Court relying upon ***Bhim Singh and others v. Zile Singh and others***, 2006(3) CCC 479 (P&H) wherein it has been held that plea of adverse possession can be taken only in defence and not by the plaintiff. No contrary law has been shown to the above stated authority by the learned counsel for the appellants.

More so, the appellants in their suit filed in 2008 have claimed their possession over the suit land since last 50 years. Meaning thereby they are claiming their possession over the suit land open and hostile to the

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respondents since 1958, but they have miserably failed to prove so. The revenue record (Ex.P-1 to Ex.P-12) relied upon by the appellants in support of their above assertions belies them that they were in possession of the suit land since 1958 or prior to it inasmuch as the above revenue record proves possession of the appellants of the suit land at the most since 1979-80 and not prior to that.

The doctrine of abandonment of the suit land by the respondents is not available to the appellants inasmuch as respondents have claimed that partition suit filed by them against the appellants for separation of their share in the suit land was pending. Therefore, it does not lie in the mouth of the appellants that respondents had ever any intention of abandoning their right over the suit land.

By this time it is well-settled that every co-sharer even not in possession of any portion of the joint property is deemed to be in possession of every inch of the same. Since suit land is a joint holding amongst the parties to this appeal, therefore, possession of the appellants as co-sharers over the same has to be treated as joint with the respondents also for all intents and purposes.

Facts and circumstances of **Kirpa's** case (supra) are completely distinguishable from the facts and circumstances of the present case, therefore, no benefit of the same can be given to the appellants. More-so, in the above judgment no reference has been made to **Bhim Singh's** case (supra) wherein it has been held that plea of adverse possession can be taken only in defence.

I have gone through the impugned judgments of both the

Courts below and find no ambiguity or illegality in the same.

No question of law muchless substantial has been raised or

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arises for consideration in this appeal.

In view of discussion made above, the appeal is dismissed.

CM-954-C of 2018 is dismissed as withdrawn.

March 06, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.