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

RSA No.4845 of 2015 (O&M)
Date of Decision: 09.07.2018

Tara Chand

....Appellant

Vs

Gian Chand

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Ashish Gupta, Advocate,
for the appellant.

RAJ MOHAN SINGH, J.(Oral)

1. Defendant is in second appeal in a suit for possession filed by the plaintiff.

2. Plaintiff sought possession by removal of encroachment from defendant from Khasra Nos.53/2 (0-1) and 54 (0-2) total measuring 3 Marlas of land. Plaintiff claimed his ownership on the basis of purchase from Shiv Charan and Om Parkash vide sale deed dated 22.09.2004. The sale consideration was shown to be Rs.10,000/- in the sale deed itself. Plaintiff further alleged that the defendant took benefit of his absence and encroached upon the land by installing two huts.

3. The suit was contested by the defendant thereby pleading that he had already installed an electric connection in

the year 1997 and possession of the defendant was in the knowledge of the plaintiff and he had perfected his title on the basis of adverse possession. The revenue entries were also claimed to be wrong.

4. In the replication filed by the plaintiff, old possession of the defendant was denied. Plaintiff asserted that possession was delivered to him after execution of the sale deed. A demarcation was conducted on 10.06.2009 and no encroachment was found. The encroachment by the defendant was claimed to be recently done.

5. In the counter claim set up by the defendant on the basis of adverse possession, he could not prove the ingredients of adverse possession with reference to date, nature of possession, knowledge and uninterrupted possession of the defendant.

6. The Hon'ble Apex Court in **Karnataka Board Wakf vs Government of India, 2004(2) RCR (Civil) 702** has held that mere long possession does not fructify in favour of defendant for claiming adverse possession. Adverse possession should be hostile by clearly asserting hostile title in denial of the title of the true owner. A party claiming adverse possession must prove that his possession is "*nec vi, nec clam, nec precario*" i.e. peaceful, open and continuous and the same should be adequate, in continuity, in publicity and in extent to show that their

possession is adverse to the true owner. It must start with a wrongful disposition of the original owner and is actual, visible, exclusive, hostile and continued over the statutory period. It is not a pure question of law, rather it is a mixed question of law and facts. A person claiming adverse possession, must show; (a) On what date, he came into possession; (b) What was the nature of his possession; (c) Whether the factum of possession was known to other party (d) How long his possession had continued; (e) His possession was open and undisturbed. Plea of adverse possession has no equities, rather the same is somehow a piratical right. The person has to plead and prove his adverse possession on the aforesaid parameters. The plea of adverse possession was negated by both the Courts below.

7. Vide order dated 23.11.2016, the contention of learned counsel for the appellant was noticed in the context of inadequacy of court fee paid by the plaintiff. The recital of the sale deed was to the effect that the land in question was sold by the plaintiff for a sale consideration of Rs.10,000/-.

8. If the case is covered by the law laid down in **Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, 2010 (2) RCR(Civil) 564,** an amount of Rs.475/- was payable on the sale consideration as shown in the instrument.

9. Evidently, no issue was struck. The plea was never adverted to by both the Courts below in the judgments and

decrees passed concurrently. Even though the plea being legal in nature can be raised at any stage of litigation, still the onus was on the defendant to assert the same by way of getting relevant issue framed and to lead evidence.

10. Perusal of the impugned judgments and decrees would show that there was no such evidence led by the appellant. The land in question was *gair mumkin* land but the same was shown by khasra number and assessed to land revenue.

11. The Court fee payable on the agriculture land would be ten times.

12. The findings recorded by both the Courts below cannot be faulted with nor the same are proved to have suffered with any perversity.

13. No law point worth consideration is involved in the appeal.

14. This regular second appeal is accordingly, disposed of.

09.07.2018

Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No