

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

**RSA-1710-2017 (O&M)
Date of Decision:11.07.2018**

Resham Singh

... Appellant

Versus

Teja Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. S.K. Choudhary, Advocate for the appellant.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Suit filed by Teja Singh-plaintiff for possession of the suit land measuring 2 kanals and 7 marlas was decreed vide judgment dated 17.09.2015 passed by the trial Court. Civil appeal preferred by the defendant has been dismissed by the District Judge, Moga vide order dated 03.11.2016 and thereby affirming the judgment and decree of the trial Court.

2. Resultantly, the defendant/appellant, Resham Singh is in second appeal before this Court.

3. Brief facts of the case are that the plaintiff made averments in the plaint that previously Sarban Singh S/o Harnam Singh was the owner of the suit land and which was purchased by the plaintiff vide sale deed dated 10.07.1984 for a consideration amount of Rs.20,000/-. Mutation on the basis of the sale deed was also duly sanctioned. Plaintiff had applied for demarcation of the suit land and in pursuance thereto, Kanoongo and Patwari demarcated the land on 24.12.2008 and it was found that 2 kanals and 7 marlas of land had been illegally encroached upon by the defendant.

Plaintiff asserted that he being the owner of the suit property was entitled to get back the encroached land from the defendant. Suit of the plaintiff was contested by the defendant by filing a written statement that he is owner of the suit land by way of adverse possession and further took a stand that he had purchased the suit land from Ashok Kumar S/o Gurdas Rai in the year 1986 and who had in turn purchased that from Sarban Singh.

4. On the basis of evidence adduced on record, plaintiff/respondent was held to be owner of the suit property.

5. Insofar as the defendant (appellant herein) is concerned, finding has been recorded that even though he had asserted that he had purchased the suit property from Ashok Kumar S/o Gurdas Rai in the year 1986 but no document had been adduced in evidence to substantiate such stand. Furthermore, the Courts have held that the defendant/appellant has set up contradictory pleas inasmuch as on the one hand, he is claiming ownership on the basis of adverse possession and on the other hand, has set up a claim of having purchased the suit property from Ashok Kumar in the year 1986. The revenue record adduced in evidence has reflected Resham Singh (appellant herein) to be in possession of the suit property as 'Gair Marusi'. In other words, possession of the appellant is reflected as permissive. It was a virtual admission on the part of the appellant as regards plaintiff/respondent to be the owner of the suit property. The Courts below have rightfully held that permissive possession at inception does not become adverse merely by passage of time in the absence of requisite animus. Onus was upon the defendant/appellant to prove that his possession become adverse and to the knowledge of the plaintiff/respondent. He has failed to discharge such

onus.

6. Counsel has not been able to point out and demonstrate any perversity or patent infirmity in the judgments passed by the Courts below.

7. There is no merit in present second appeal and the same is dismissed.

11.07.2018

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No