

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

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RSA No.2207 of 2017 (O & M)
Date of Decision:14.03.2018

Same (deceased) through LR's and others

...Appellants

Versus

Murti Devi and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sherry K. Singla, Advocate
for the appellants.

Mr. Vikram Punia, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court.

Plaintiff claims that he has perfected his title by prescription of time (adverse possession). In the previous litigation, which ended on 20.11.2004, plaintiff was held to be a trespasser. Plaintiff thereafter filed a suit on 15.12.2004 i.e. within a period of 25 days from the earlier decision claiming that he has become owner as he was a occupancy tenant. Defendant-respondent filed counter claim claiming relief of possession on 20.03.2006. Plaintiff withdrew his suit on 31.10.2008. Counter claim which is equivalent to a separate suit was thereafter independently tried.

Learned First Appellate Court after appreciating the evidence available on the file has recorded a finding that the plaintiff, who is respondent in the counter claim, has not been able to prove his title by way of prescription of time (adverse possession).

Learned counsel for the appellant has vehemently argued that his adverse possession is to be seen from 1991. In the considered opinion of this Court, this argument is not available to the appellant as the litigation was pending. In the previous round, the litigation came to an end when the first appeal was decided on 20.11.2004. Immediately thereafter the plaintiff filed a subsequent suit, which was ultimately withdrawn. Counter claim was filed on 28.03.2006.

In view thereof, there is no scope for interference with the finding of the learned First Appellate Court.

Hence, the regular second appeal is dismissed.

14.03.2018
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(ANIL KSHETARPAL)
JUDGE

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