

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

1. RSA-2321-2017 (O&M)

Sant Singh

... Appellant

Vs.

Jagdish Singh and others

... Respondents

2. RSA-2102-2017 (O&M)

Vidya and another

... Appellants

Vs.

Jagdish Singh and others

... Respondents

Date of Decision: 20.11.2018

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present : Mr. Namit Gautam Advocate
for the appellant in RSA-2321-2017.
Mr. Tribhuwan Singla, Advocate
for the appellants in RSA-2102-2017.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of aforementioned two regular second appeals filed at the instance of defendant No.3 and legal representatives of defendant No.2 arising out of the decision rendered in Civil Suit No.1939 of 2003; titled as Jagdish Singh and others v. Lachhman Singh and others.

Respondents-plaintiffs claimed separate possession by way of partition of property by removal of encroachment of defendant No.3 over the plot measuring 0 Kanals 18 Marlas on the premise that the aforementioned Khewat was joint.

Defendant No.2 opposed the suit and pleaded no locus standi of the plaintiffs and further pleaded that suit in the absence of non joinder and mis joinder of the necessary parties was not maintainable.

Defendant No.3 filed separate written statement and set-up the plea of adverse possession on account of possession over the property for

the last more than fifty years.

On preponderance of evidence, the trial court decreed the suit filed by the plaintiffs. Accordingly two appeals filed by the defendants have been dismissed.

Learned counsel for appellant-defendant No.3 submitted that plea of adverse possession has been declined only on the point that no evidence has been led but court below has not given any finding in respect of sale deed registered by the plaintiff wherein there is a reference in respect of name of the plaintiff whereby possession adverse had been proved.

Learned counsel for the appellant-defendant No.2 submitted that other co-owners were not impleaded in the suit, therefore, suit in the absence of other co-owners was not maintainable. In this regard, issue no.5 was framed but finding has been returned on the premise that no such evidence was led.

I am afraid the aforementioned arguments of the learned counsel for the appellants-defendants are not sustainable as the appellant-defendant No.3 has not been able to establish adverse possession in view of the law laid down by the Supreme Court in the case of **Ram Nagina Rai and another** v. **Deo Kumar Rai (Deceased) by LRs and another**; 2018 (5) RCR (Civil) 398 wherein it is held in paras 11 and 12 as under:

“11. Thus, it is important to assess whether such intention to dispossess is apparent to the actual owner or not. The intention of the adverse user must be communicated atleast impliedly to the actual owner of the property. His hostile attitude should be open to the knowledge of the real owner. It follows that the intention and possession of the adverse possessor must be hostile enough to give rise to a reasonable notice to the actual owner.

12. Applying the test of nec vi, nec clam, nec precario i.e., 'without force, without secrecy, without permission,' as an established test for

finding adverse possession, we find that the defendants have not proved their possession to be adverse to that of the real owner inasmuch as they entered into possession as licensees to begin with and there is nothing on record to show as to when the permissive possession became adverse to the interest of the real owner. 'Animus possidendi' is one of the ingredients of adverse possession, and unless the person possessing the property has the requisite hostile animus, the period of prescription does not commence. Virtually, the defendants are required to prove the possession to be adequate in continuity, adequate in publicity and to adequately show that their possession is adverse to that of the true owner. It must start with wrongful dispossession of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

The physical fact of exclusion, possession has no equities in his favour. Since he is trying to take away the rights of the true owner, it is for him to clearly plead and establish all the facts necessary to establish his adverse possession."

As regards the argument suit is not maintainable in the absence of non joinder and mis joinder of the necessary parties, no such evidence has been led.

As an upshot of my finding, I do not find any illegality and perversity in the concurrent finding of fact rendered by both the court below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeals are dismissed.

20.11.2018
rajeev

(AMIT RAWAL)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**