

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.6539-C-2017 in/and
RSA No.2636 of 2017 (O&M)
Date of decision: 06.07.2018

Harwinder Singh.

..... Appellant

Versus

Gurdial Singh.

.... Respondent

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Jaivir S. Chandail, Advocate for the appellant.

B.S. Walia, J. (Oral)

[1] Regular Second Appeal has been filed against the judgment and decree of the learned Lower Appellate Court dated 22.07.2016 upholding the judgment and decree dated 20.02.2015 passed by the learned Civil Judge (JR) Division Sangrur decreeing the civil suit in favour of the respondent/plaintiff and holding him entitled to the possession of suit property comprised of Khasra Nos.1273/14 (0-1), 1273/13 (0-1) situated within the revenue estate of village Kular Khurd, Tehsil and District Sangrur as per Jamabandi for the year 2007-08. The instant Regular Second Appeal is accompanied with an application seeking condonation of 110 days' delay in filing thereof.

[2] The case as set up by the respondent/plaintiff was of his father Jaimal Singh initially being the owner of the suit property and of his having inherited the same as his legal heir on account of being his adopted son, that the appellant/defendant, a close relative, by taking advantage of the

relationship with him as well as also of his old age expelled him from the house in dispute and forcibly took possession of the same, that he being an old man of 76-77 years of age could not use force against the appellant/defendant. The appellant/defendant not only expelled him from the suit property but also stole his household articles from the suit property and sold the same despite having no concern with the suit property, consequentially he being owner had every right to get back possession of the suit property. His request's to the appellant/ defendant to hand over the suit property were refused by the appellant/ defendant, therefore, he was constrained to institute the civil suit.

[3] The main defence of the appellant/defendant was of his being the adopted son of the respondent/plaintiff, therefore, being in possession of the house in question in his own right, secondly, in the alternative, claim was on the basis of adverse possession.

[4] Learned counsel appearing for the appellant/defendant fairly conceded that no evidence was led with regard to adverse possession, while in respect of the claim for being the adopted son of the respondent/plaintiff, the only evidence was an entry in the ration card (Ex.DW-1/A) reflecting the name of the appellant defendant as well as of his wife as the son and daughter-in-law of the respondent/plaintiff. However, no adoption deed was set up in evidence nor any witness deposed that the appellant/defendant was the adopted son of the respondent/plaintiff.

[5] Although adoption is not proved but even if for the sake of argument, it is accepted that the appellant/defendant is the adopted son of the respondent/plaintiff, that in itself would not confer ownership right over the suit property in favour of the appellant/defendant.

[6] As regards the plea of adverse possession, it needs mentioning that PW-1 Bharatpur Singh stated that the appellant/defendant had been allowed to stay in the house by the respondent/plaintiff. In the circumstances, possession, if any, of the appellant/defendant in the house in question was permissive and by no stretch of imagination could confer adversarial rights in his favour.

[7] Admittedly, the house in dispute measuring 02 marlas is entered in the Jamabandi for the year 2007-08 in the name of the respondent/plaintiff. The status of the appellant/defendant in the property in question was nothing more than that of a licensee. A licensee has no right or title in the property against the original owner. Accordingly, the respondent/plaintiff Gurdial Singh was well within his rights to seek possession of the house in dispute from the appellant/ defendant on account of having been dispossessed illegally and forcefully.

[8] In the circumstances, no substantial question of law arises for consideration in the instant appeal. Accordingly, finding no infirmity with the order passed by the learned Lower Appellate Court upholding the order passed by the learned Civil Judge (Jr) Division, the Regular Second Appeal is dismissed in limine. Likewise, finding no merit in the application seeking condonation of 110 days' delay in late filing of the appeal, the same is also dismissed.

(B.S. Walia)
Judge

06.07.2018
amit

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