

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 30.8.2018

RSA No. 3597 of 2017

Hoshiyar Singh

---Appellant

versus

Sunil Kumar and others

---Respondents

RSA No. 5339 of 2017

Hoshiyar Singh

---Appellant

versus

Sunil Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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

Rekha Mittal, J.

This order will dispose of RSA Nos.3597 and 5339 of 2017 as these have emerged out of the same judgment and decree dated 1.4.2017 passed by the Additional District Judge, Mewat whereby two appeals filed by Sunil Kumar and others, respondents-plaintiffs against the judgment and decree dated 30.1.2016 passed by the Additional Civil Judge (Senior Division), Mewat vide which suit of the respondents-plaintiffs was dismissed and counter claim of the appellant-defendant was accepted, have

been allowed, the judgment and decree passed by the trial court were set aside and suit filed by the respondents-plaintiffs for possession was decreed whereas counter claim of the appellant-defendant has been dismissed.

The sole submission made by counsel for the appellant is that the suit land was purchased by him from father of plaintiffs No. 1 to 3 in the year 1965 and since then he is in possession of the suit land continuously, openly and without any interruption, therefore, the appellant has become owner of the suit land both on the basis of oral sale as well as by adverse possession but the Court in Appeal has wrongly rejected his plea in this regard by setting aside the judgment and decree passed by the trial court.

I have heard counsel for the appellant, perused the paper book particularly the judgments passed by the Courts.

The appellant raised the plea that he purchased the suit land from father of the plaintiffs in the year 1965 and since then he is in possession of the same and raised construction of a kotha in the suit land. Indisputably, the appellant has not produced any document of title to substantiate his plea with regard to purchase of suit land from father of the respondents-plaintiffs. As such, plea of the appellant that he has become owner of the suit land on the basis of purchase has rightly been rejected by the Courts.

In the written statement filed by the appellant, he did not raise any plea that he has become owner of the suit land by way of adverse possession. On the contrary, he filed a counter claim to assert his claim of ownership of the suit land by way of adverse possession. As per the settled position in law, plea of ownership on the basis of adverse possession is not

maintainable as a plaintiff for such a plea is available only in defence.

There cannot be any denial that counter claim is a cross suit, therefore, plea of ownership on the basis of adverse possession is not available to be raised. In this view of the matter, I do not find an error much less perversity in the judgment passed by the Court in appeal, rectifying the error committed by the trial court.

For the foregoing reasons, the appeals fail and are dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

30.8.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No