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

**RSA No.3933 of 2018 (O&M)
Date of Decision: 05.07.2018**

Ram Saran

.....Appellant

Vs

Vinod Kumar

...Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Rakesh Kumar Sharma, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

CM No.10260-C of 2018

This is an application under Section 149 CPC read with Section 151 CPC for permission to make good the deficiency in court fee. Requisite court fee has been affixed.

For the reasons mentioned in the application, the applicant is permitted to make good the deficiency in court fee.

CM stands disposed of.

CM No.10261-C of 2017

For the reasons mentioned in the application, day of 38 days in re-filing the present appeal is condoned.

Application stands disposed of.

RSA No.3933 of 2018 (O&M)

[1]. Defendant is in Regular Second Appeal in a suit for possession filed by the plaintiff which was decreed by both the Courts below.

[2]. Brief facts can be noticed that earlier Sarla Raina was owner in possession of plot no.3 measuring 74 sq. yards and plot no.4 measuring 148 sq. yards. Total area measuring was 222 sq. yards comprised in Khasra No.16/25/2. Sarla Raini had purchased the aforesaid plots from Rohtash Sharma on 11.04.1990. Thereafter, she sold plot no.4 to defendant on 23.08.1991. She also sold plot no.3 to Bhoop Singh on 23.08.1991. Bhoop Singh executed General Power of Attorney dated 17.01.1997 in favour of Kehar Singh, who sold plot No.3 to the plaintiff on 02.03.2007 i.e. marked by letters as 'ADEF'. So far as, plot no.3 is concerned, defendant is a stranger to the same.

[3]. Defendant had earlier filed a suit for permanent injunction against Desh Raj and Bhoop Singh which was decreed on 23.12.2009. In the appeal filed by Desh Raj, the same was partly allowed on 12.03.2010. The suit *qua* plot no.3 measuring 74 sq. yards was dismissed, whereas suit *qua* plot no.4 was decreed. RSA No.2125 of 2010 filed by Ram Saran was dismissed on 12.07.2010.

[4]. The defendant set up a counter claim to challenge the sale deed executed by Bhoop Singh through Attorney in favour of plaintiff. Defendant claimed himself to be in possession of plot no.3 and staked his claim on the basis of adverse possession since 1992. The effort of the plaintiff to take possession of the suit land after adjudication of civil suit upto RSA No.2125 of 2010 was denied and resisted by the defendant on the basis of his plea of adverse possession.

[5]. Perusal of record would show that the counter claim set up by the defendant was dismissed by the trial Court and the said judgment has attained finality for want of further challenge made by him in any appropriate Forum. In this way, the unsuccessful attempt made by the defendant to challenge the sale deed executed by Bhoop Singh through Attorney in favour of plaintiff became final. Bhoop Singh and Kehar Singh were not party to the suit.

[6]. Plea of adverse possession has to be appreciated on the requirement of "*nec vi, nec clam, nec precario*" i.e. the defendant must prove his possession. A mere possession or permissive possession does not demonstrate spectrum of adverse possession. The possession should be actual, open, notorious, exclusive and continuous for the required time as provided in law. In **Karnataka Board of Wakf vs. Government**

of India & Ors., 2004(2) R.C.R. (Civil) 702 it was held that the adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. A party claiming adverse possession must prove that his possession is “*nec vi, nec clam, nec precario*” i.e. peaceful, open and continuous and it should be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the original owner and is actual, visible, exclusive, hostile and continued over the statutory period.

[7]. Plea of adverse possession is not a pure question of law, rather it is a mixed question of law and facts. A person, who claims adverse possession must show; (a) On what date, he came into possession; (b) What was the nature of his possession; (c) Whether the factum of possession was known to other party; (d) How long his possession had continued and (e) His possession was open and undisturbed.

[8]. Plea of adverse possession has no equities rather this right has some instinct of piratical rights. The person has to plead from what date his possession became adverse and he must disclose the necessary ingredients in his pleadings.

[9]. No issue of adverse possession was framed. The

counter claim filed by the defendant has already culminated in dismissal and the said order was not assailed further. The alleged hostile title by taking the title of true owner has not been proved as the title of the plaintiff was said to be denied by way of filing counter claim. In the absence of any further challenge to the order of dismissal of counter claim, no such plea can be entertained at this stage. The findings recorded by the Courts below are not found to be the result of any misreading of evidence on record or suffered with any perversity of any type.

[10]. In view of above, no substantial question of law worth consideration is involved in the present appeal. The same is found to be devoid of merits and is accordingly dismissed.

July 05, 2018
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No