

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

133

RSA-866-2017 (O & M)
Date of Decision:03.10.2018

Deen Dayal @ Dinesh

...Appellant

Versus

Bal Kishan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Jain, Advocate
for the appellant.

ANIL KSHETARPAL, J.(Oral)

Defendant-appellant is in the regular second appeal against the well reasoned judgment passed by the Appellate Court reversing the judgment passed by the learned trial Court, which was strange.

Plaintiffs filed a suit for possession claiming that in the previous litigation decided on 11.10.1984 on the basis of a compromise which is Ex.CX, he is entitled to the possession and the defendant had forcibly entered into possession as the plaintiffs had started residing in Rewari.

Defendant contested the suit and pleaded that the plaintiffs have never resided in the village and the civil Court decree dated 11.10.1984 is illegal. He further pleaded that he has perfected his title by adverse possession.

This Court has heard learned counsel for the appellant at

Learned counsel for the appellant has made the following submissions:-

- (i) Present suit was filed after a period of 21 years;
- (ii) Identity of the property is in dispute and the lay out plan as referred to in the plaint was never attached and produced;
- (iii) In 1986-87, defendant-appellant got installed electricity and water connection in the premises but no objection was raised;
- (iv) that the plaintiffs when appeared in evidence have admitted that they only intended to file a suit for declaration and not for possession.

This Court has heard learned counsel for the appellant and with his able assistance gone through the judgments passed by the Courts below.

As regards the first argument, it may be noted that once there is a previous decree passed by the Court on the basis of compromise, the title of the plaintiffs-respondents is not in dispute. Plaintiffs have failed to show that they have perfected his title by way of prescription of time. Therefore, suit for possession on the basis of title cannot be held to be barred by time.

Still further, identity of the property is not in dispute particularly when the previous decree and the compromise is part of the file. Plaintiffs are seeking property in accordance with the previous decree passed on the basis of compromise dated 11.10.1984. Therefore, merely because lay out plan was not attached the suit cannot be dismissed.

Next argument of learned counsel is actually covered by first

argument. However, learned counsel insisted that since the defendant started using the property in the year 1986-87 and since the plaintiffs did not raise any objection, therefore, now it is too late for the plaintiff to file the suit.

In the considered view of this Court, merely on getting electric connection or water connection, the ownership in the immovable property cannot get transferred.

In the present case, once in 1984, the defendants themselves entered into a settlement and admitted ownership of the plaintiffs, they cannot later on turn around and frustrate the aforesaid decree by taking hyper technical objections.

Last argument of learned counsel that the plaintiffs while appearing in the evidence have stated that they only intended to file a suit for declaration is to be noticed and rejected particularly when the plaintiffs has filed a suit for possession of the property and mere oral statement would not convert the suit for possession into that of declaration only.

Hence, there is no ground to interfere.

Regular second appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

03.10.2018
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(ANIL KSHETARPAL)
JUDGE

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