

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

**RSA No.2048 of 1988 (O&M)
Date of Decision.25.03.2019**

Budh Ram

..Appellant

Vs

Bhagwan Dass and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: None.

:-

AMIT RAWAL J. (ORAL)

The present appeal is directed against the judgment and decree of the lower Appellate Court whereby decree of the trial court has been modified by rejecting declaration of ownership by way of adverse possession and the appellant-plaintiff was held to be liable for eviction from the property in due course of law.

The appellant-plaintiff filed suit for injunction seeking restraint against the defendants from interfering into ownership and possession over *nauhra* shown by letters ABCDE on the premise that he had been tethering cattles, sowing vegetables and growing fruit trees. Defendants threatened to dispossess the plaintiff, therefore, cause of action accrued to file the suit.

Defendants No.1 to 5 opposed the suit. Defendant No.1 claimed himself to be owner having purchased the property in dispute in auction from the Department of Custodian which was numbered as plot No.160 SPB-XII, Bhiwani and relied upon sale certificate dated 29.4.1961 and since then, had been in possession of the suit property.

On receipt of the replication, the trial Court framed

following issues and additional issues:-

- “1. Whether the plaintiff is the owner and in possession of the property in dispute as alleged?*
- 2. Whether the plaintiff has become owner by adverse possession?*
- 3. Whether the plaintiff has no locus-standi or cause of action to file the present suit?*
- 4. Whether the suit is bad for non-joinder of necessary parties?*
- 5. Whether the suit is mala fide?*
- 6. Whether the suit is bad for non-disclosure of true facts?*
- 7. Whether the suit is bad for mis-joinder of parties?*
- 8. Whether the suit is not maintainable in the present form?*
- 9. Whether the Civil Court has no jurisdiction to try the present suit?*
- 10. Whether the suit is false and frivolous?*
- 11. Whether the suit is not properly valued for the purposes of court fee and jurisdiction?*
- 11-A. Whether defendant No.5 along with his brothers are owners and in possession of the suit property? OPD*
- 11-B. Whether the plaintiff is estopped by his acts and conduct to file the present suit? OPD*
- 11-C. Whether defendant No.5 is entitled to special costs amounting to Rs.2000/-? OPD*
- 11-D. Whether defendant No.1 is owner in possession of the property in dispute? OPD.*
- 12. Relief.*

The plaintiff in support of the evidence examined four witnesses and brought on record Ex.P1 to P5 whereas the defendants examined five witnesses and brought on record sale certificate as Ex.DA.

The plaintiff had also set up ownership on the basis of adverse possession.

The trial court decreed the suit in toto, which was modified as indicated above.

As per the memorandum of appeal, it has been alleged that the lower Appellate Court committed illegality and perversity in setting aside the finding on the premise that the plaintiff failed to prove ownership by way of possession whereas possession had been continuous, notorious and known to the whole world. The sale certificate alleged to have been issued by the Rehabilitation Department was not proved by summoning the original file. Mool Chand was never in possession of the site in dispute in pursuance of the sale certificate. Defendants miserably failed to prove their ownership and possession.

There is no representation on behalf of respondents No.1 to 4. As per office report, registered ADs were issued to respondents No.1 to 4, however, received back unserved qua respondent No.1 whereas respondents No.2 to 4 died. No effort has been made to implead legal representatives of respondents No.2 to 4, which is the obligation of appellant-plaintiff.

While admitting the aforementioned appeal, this Court did not grant any stay. The order dated 01.09.1988 reads as under:-

“Admitted. No ground for stay is made out.”

I have through the paper book, records of Courts below and of the view that there is no force and merit in the present appeal for the simple reason that claim of ownership on the basis of adverse

possession on behalf of plaintiff is not maintainable. This view of mine is derived from the ratio decidendi culled out by Hon'ble Supreme Court in *Gurudwara Sahib v. Gram Panchayat Village Sirthala and another* 2013 (4) R.C.R. (Civil) 703. Since the appellant-plaintiff has not been able to prove ownership, the lower Appellate Court protected possession whereby defendants were restrained to interfere into the peaceful possession but held that he can be evicted from the property in dispute in due course of law. This Court is deprived of the information as to whether any steps were taken for eviction or not.

In view of such circumstances, I found that the finding rendered by the lower Appellate Court being the last court of fact and law is most innocuous and cannot be said to be suffering from any illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

March 25, 2019

Pankaj*

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No