

**RSA-2924-1988 (O&M)**

**495**

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

**RSA-2924-1988 (O&M)**

**Date of decision : 11.04.2019**

Datu

... Appellant

Versus

Panoo

... Respondent

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. C.B. Goel, Advocate  
for the appellant.

None for the respondents.

\*\*\*\*

**AMIT RAWAL, J. (ORAL)**

The present regular second appeal, at the instance of the defendant, who has not been successful in defending the suit for possession, is directed against the concurrent findings of fact, whereby the suit of the plaintiff for possession, has been decreed by the trial Court and affirmed in appeal.

The plaintiff sought the possession of the suit land by filing the suit, on 07.04.1984, on the premise that the land comprised in Khewat No.260 Khatoni No.498 Khasra No.240 (0-8) was in his ownership and the defendant's "bara" adjacent to the suit property, which he purchased from one Jima son of Karimullah. The defendant constructed the house on purchase of Bara, whereas the plaintiff installed a hand-pump and planted various trees of Mangoes, Neem Eucalyptus and Mulberri, but the defendant, without any right, forcibly made a *khori* for tethering the cattle, in the said bara. Despite repeated requests, the defendant started raising construction, thus, was constrained to file the aforementioned suit.

**RSA-2924-1988 (O&M)**

The defendant opposed the suit and stated that the suit was not maintainable as it was time barred. The suit property was although allotted to the plaintiff during consolidation and possession was also delivered to him, but on 15.12.1962, the plaintiff was dispossessed by the defendant forcibly and since then, he had been in continuous, open hostile and peaceful possession of the suit land.

In view of the aforesaid pleadings, the trial Court framed the following issues:-

- 1. Whether the plaintiff is the owner of the suit land? OPP*
- 2. Whether the suit is not maintainable in the present form?  
OPD*
- 3. Whether the suit is time barred? OPD*
- 4. Whether the proper court fees has not been paid, if so to  
what effect? OPD*
- 5. Whether the suit is bad for mis-joinder of necessary parties?  
OPD*
- 6. Whether the plaintiff has no locus standi to file the suit?  
OPD*
- 7. Relief.*

Both the parties led extensive evidence in support of their respective cases.

Mr. C.B. Goel, learned counsel appearing on behalf of the appellant-defendant submitted that the plaintiff miserably failed to prove the title or having put into possession, much less, dispossession. No demarcation report has been placed on record, in such circumstances, failed to discharge the onus as required under Section 101 of the Indian Evidence Act. The suit was liable to be dismissed.

There is no representation on behalf of the respondent despite

**RSA-2924-1988 (O&M)**

service.

The appeal is of the year 1988, therefore, I proceed to decide the appeal on merits.

This Court while admitting the appeal, vide order dated 22.12.1988, had stayed the dispossession.

I have heard learned counsel for the appellant-defendant, appraised the paper book as well as records of the Courts below and of the view that there is no force and merit in the submissions of Mr. Goel, for, the defendant, in the written statement, did not deny the allotment, in favour of the plaintiff, but alleged that since 15.12.1962, the defendant had been in possession, but no such evidence has been placed on record. The plea of adverse possession tantamounts to admitting the title. In the absence of any other document to establish the possession of the suit property, the Courts below had no other occasion, but to decree the suit, for, it was in the ownership of the plaintiff.

As an upshot of my finding, I do not subscribe to the submissions of Mr. Goel, to form a different opinion than the one already arrived at by the Courts below, much less, no substantial question of law arises for determination. No ground is made out for interference.

Resultantly, the second appeal is dismissed.

Interim order stands vacated.

**11.04.2019**  
Yogesh Sharma

**( AMIT RAWAL )**  
**JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**