

RSA-837-1989 (O&M)

564

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

RSA-837-1989 (O&M)

Date of decision : 29.05.2019

Vinod Rani

... Appellant

Versus

Punjab Wakf Board, Ambala Cantt.

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Santosh Sharma, Advocate
for the appellant.

None for the respondent.

AMIT RAWAL, J. (ORAL)

The present regular second appeal, at the instance of appellant-defendant, is directed against concurrent findings of fact, whereby suit of the plaintiff-Punjab Wakf Board, for possession of land measuring 26 kanals 8 marlas, on the basis of title, has been decreed by trial Court and affirmed in appeal.

It was alleged that the plaintiff was owner in possession of land and even nature of land was notified in the Gazette Notification (Ex.P3) and other notification appointing the officers to manage and control the affairs of the property. Respondent, in the previous suit, had sought injunction, which was declined, whereas plaintiff was held to be owner.

The defendant opposed the suit and claimed to be owner of the suit land, on the basis of the long and settled possession and also taken the

RSA-837-1989 (O&M)

plea of extinguishment of right of plaintiff i.e. title by efflux of time.

Since parties were at variance, trial Court framed following issues:-

- 1. Whether the plaintiff is the owner of the suit land? OPP*
- 2. Whether the defendant has become owner of the suit land by adverse possession? OPD*
- 3. Whether the suit is liable to be stayed under Section 10 of the CPC.*
- 4. Relief.*

Plaintiff in support of pleadings examined five witnesses and brought on record Ex.P1 to Ex.P17, whereas defendant examined four witnesses and brought on record Ex.D1 to Ex.D10.

Mr. Santosh Sharma, learned counsel appearing on behalf of appellant submitted that the entire genesis of judgments and decrees, impugned, is on the previous judgment and decree (Ex.P14 and Ex.P16), which was rendered in simpliciter suit for injunction, therefore, there cannot be any finding with regard to the title in favour of the Wakf Board as the question of title was not involved. Though, the appellant-defendant had been in continuous possession and also reflected *animus possidendi* and Article 65 of the Limitation Act has so far not been repealed despite directions of Hon'ble the Supreme Court, thus, suit was liable to be dismissed.

There is no representation on behalf of the respondent.

Since the appeal is of the year 1989, I proceed to decide the same on merits.

I have heard learned counsel for the appellant-defendant, appraised the paper book as well as records of the Courts below and of the

RSA-837-1989 (O&M)

view that there is no force and merit in the submissions of Mr. Santosh Sharma, for, the appellant-defendant admitted the plaintiff to be owner in view of the plea of adverse possession. In the previous suit also, it was found that the plaintiff was owner in possession and the suit property was of Wakf Board. The statements and judgments of the previous suit are *per se* admissible in the subsequent suit between the same parties. The appellant-defendant has not been able to prove ingredients of adverse possession, which are *sine qua non*. This view of mine is derived from the ratio decidendi culled out by Hon'ble Supreme Court in **Ram Nagina Rai and another v. Deo Kumar Rai (deceased) by LRs and another, 2018 (5) RCR (Civil) 398.**

In view of such circumstances, I find that the findings rendered by Courts below are 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.

29.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**