

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-4197-2019(O&M)

Date of decision: 10.09.2019

Kuldeep and others

..... Appellants

Versus

Sukhbir and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. SK Hooda, Advocate for the appellants.

RAMENDRA JAIN, J. (ORAL)

Through this regular second appeal, appellant-defendants laid challenge to judgment and decree dated 14.08.2019 of lower Appellate Court, whereby it reversing the judgment and decree of trial Court dated 12.05.2014, decreed the suit of contesting respondent-plaintiffs No. 1 to 3 for possession with consequential relief of permanent injunction.

Briefly, suit property bearing plot No. 575, measuring 565 Sq. Yards was allotted to Abhey Singh, father of respondent-plaintiffs No. 1 and 2 and Ranbir Singh (since deceased), in a partition suit titled as 'Abhey etc. Vs. Chandgi etc.', decided on 21.11.1949 (Ex. P-1/Ex. P-1/A), by Civil Court at Rohtak. In execution of the aforesaid decree, pursuant to warrants of possession dated 19.11.1954 (Ex. P-5/P-6), possession of the plot was handed over to Abhey Singh-father of contesting respondent-plaintiffs No. 1 to 3. The defendant-appellants somehow, thereafter, encroached upon the suit property. Resultantly,

contesting respondent-plaintiffs No. 1 to 3, filed a suit for possession and permanent injunction against the appellants and Gram Panchayat, village Bhainswal Kalan Bawla, Tehsil Gohana, which after holding trial was dismissed by the trial Court vide judgment and decree dated 12.05.2014.

Being aggrieved, contesting respondent-plaintiffs No. 1 to 3 approached the lower Appellate Court, who while accepting their appeal and setting aside aforesaid judgment and decree of trial Court dated 12.05.2014, decreed their suit in *toto*, vide impugned judgment and decree dated 14.08.2019.

Learned counsel for the appellants *inter alia* contends that suit property falls within the *abadi deh* (Lal Dora) of village Bhainswal Kalan. Appellant-defendants are in settled possession of the same. It is well settled proposition of law that properties which falls within *lal dora*, their possession follows ownership. The lower Appellate Court, failed to appreciate that earlier also, contesting respondent-plaintiffs No. 1 to 3, had filed a suit against third person, Mahender and six others, pleading that he had encroached upon the suit property illegally, but later on withdrew the same, in view of some settlement in between them. Lower Appellate Court has wrongly relied upon Hindi translation of warrants of possession dated 19.11.1954 (Ex. P-5/Ex. P-6), report of bailiff Ex. P-9/Ex. 10 (Hindi translation of Ex. P-9), ignoring the fact that the same were not legally proved by examining their scribe. PW-3 Sukhbir, tendering his affidavit Ex. PW-3/A, exhibited the above documents, but did not offer himself for cross-examination. Therefore, his examination-in-chief, was not liable to be taken into consideration. In support of his

contentions, learned counsel for appellants has relied upon judgments of this Court in **Hawa Singh Vs. Daya Nand and others, 2010 (21) RCR (Civil) 918** and **RSA-2785-2014, Santosh Vs. Vikrant and others,** decided on 11.07.2014.

Having given thoughtful consideration to the submissions of learned counsel for the appellants, this Court finds the instant regular second appeal merits dismissal for the reasons to follow:

It is un-rebutted on record that suit property was allotted to Abhey Singh, vide judgment and decree dated 21.11.1949 (Ex. P-1/Ex. P1/A) passed in a civil suit titled as 'Abhey etc. Vs. Chandgi etc.'. Pursuant to the same, possession was delivered to decree-holder-Abhey Singh, through warrants of possession dated 19.11.1954 (Ex. P-5/Ex. P-6). After delivery of possession, bailiff of Court at Gohana submitted his report, Ex. P-9 dated 16.12.1954.

The appellant-defendants, did not choose to rebut said documents, rather disputed the title of contesting respondent-plaintiff Nos. 1 to 3, on the basis of their possession without claiming their title over the same even by way of adverse possession. The word 'adverse possession' was not used by the appellants in their written statement, rather they simply claimed their 'long possession'. Non-claiming of their title over the suit property by the appellant-defendants by way of adverse possession requires to draw adverse inference, that they did not take such plea intentionally and deliberately, knowing well that they would not be able to prove so.

Now, it has to be seen as to from which date, appellant-

defendants were in possession of the suit property. To claim adverse possession, a person is required to prove his un-interrupted and hostile possession, continuously for the last 12 years. On perusal of evidence led by appellant-defendants, the only irresistible conclusion which can be drawn is that their possession over the suit property was not more than 12 years, rather was less. DW-3 Hawa Singh and DW-4 Balbir, vide their respective affidavits Ex. DW-3/A and Ex. DW-4/A dated 22.01.2014, averred that appellant-defendants were in possession of the suit land, since their childhood. Recently, appellant-defendant No. 3-Amarjeet, constructed a boundary wall of 3-4 feet in height which was in existence since last 10 years. Meaning thereby, appellant-defendants had constructed their wall around the suit property around the year 2004. Instant suit filed by respondent-plaintiffs No. 1 to 3 in the year 2009. Therefore, it was apparent that suit for possession was filed by them within 12 years of un-authorized possession of the appellant-defendants over the suit property. The lower Appellate Court, has rightly discarded affidavit of DW-6 Ex. DW-6/A, which was completely contradictory to the affidavits of DW-3 and DW-4, namely; Hawa Singh and Balbir.

As far as, Hindi translation of Urdu documents taken into consideration by lower Appellate Court is concerned, this Court is of the view that the same has rightly been relied upon, inasmuch as, no contrary document or Hindi translation was ever produced by appellant-defendants to falsify the same or that it was incorrect. No rebuttal to the Hindi translated documents was led by the appellant-defendants.

Suit property though may be falling within the *abadi deh*, but

the fact remains that it was allotted to Abhey Singh, father of contesting respondents No. 1 to 3, vide judgment and decree Ex. P-1, which was duly incorporated in the field book Ex. P-8 by the Revenue Authorities also. This fact could not be rebutted by the appellant-defendants, leading any evidence, what to talk of cogent and convincing.

Demarcation report Ex. PW-2/A, furnished by local commissioner in another suit titled 'Om Parkash Vs. Ranbir', relied upon by lower Appellate Court, clearly spelled out encroachment of appellant-defendants over the suit property. In the absence of any contrary demarcation report, lower Appellate Court has rightly decreed the suit of contesting respondent-plaintiffs No. 1 to 3.

No question of law, much less substantial, has been raised in this regular second appeal. Hence, the same is held not maintainable.

The facts and circumstances of the judgments relied upon by learned counsel for the appellants are quite distinguishable to the facts of instant case, therefore, no benefit whatsoever of the same can be given to them.

Dismissed.

September 10, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No