

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

RSA No.1613 of 2016 (O&M)

Date of Order: 18.01.2019

Hardev Singh(since deceased) through his LRs

..Appellant

Versus

Balbir Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aayush Gupta, Advocate
for the appellant.

Mr. R.P.S.Ahluwalai, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Defendant-appellant through his legal heirs is in the regular second appeal against the judgment passed by the learned first appellate court reversing the judgment of the learned trial court and decreeing the suit for declaration and possession.

Plaintiffs claimed that they are owners of the property and entry of exchange in the revenue record is wrong and in fact defendant, who is since deceased represented by his legal heirs is an encroacher.

Defendant contested the suit and pleaded perfection of title by way of adverse possession on the ground that his possession is continuous and uninterrupted apart from being hostile for more than 20 years.

Learned trial court dismissed the suit on the ground that possession of the defendant is proved for more than 50 years although the pleadings were only to the extent of 20 years.

In appeal, the court re-appreciated the facts and found that possession of the defendant was initially recorded on the basis of exchange

and thereafter it was recorded as Gair Marusi, although, in the column meant for rent, no rent was payable.

In these circumstances, the court held that there is no evidence to the effect that since when the possession of the defendant became adverse and when the defendant perfected his title by way of adverse possession.

In this court, application for additional evidence was filed seeking permission to produce a copy of the jamabandi for the year 1964-65. On careful perusal thereof, it is apparent that Harnek Singh, defendant was in possession as a mortgagee along with his brother. Thereafter entry has been changed first to exchange and thereafter 'Gair Marusi'.

Keeping in view the aforesaid additional evidence, even if it is taken into consideration, does not advance the case of the defendant.

Once it is proved that the defendant came into possession with the permission of the owner, defendant was required to pleaded and prove as to when his possession turned hostile to the knowledge of the plaintiff. In the present case, as correctly found by the first appellate court that defendant failed to prove that fact. Learned first appellate court has discussed the evidence elaborately and learned counsel for the appellant could not point out any substantive error or perversity in the judgment.

In view thereof, this court does not find any good ground to interfere. The regular second appeal is dismissed.

January 18, 2019
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No