

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

RSA No.3978 of 2016 (O&M)

Date of decision:16.05.2019

Chandri

... Appellant

Vs.

Dhanwan Kumar and others

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.S.Hooda, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Appellant-defendant no.1 has not been successful in a suit for possession of the area measuring 7 marlas i.e.212 square yards forming the part of khasra no.106/19(5-3) situated within the Municipal Limits of Palwal by giving the description of the property.

The plaintiffs have purchased the property, vide sale deeds dated 16.01.2008 and 28.06.2011. It was alleged that plaintiff no.1 purchased 14/103 share of khasra no.106/19/1(5-3) which comes to 424 square yards and mutation bearing no.12453 was also sanctioned on 7.1.1987. He sold half share towards the North side out of the total area of 424 square yards to Kachera Mal through registered sale deed dated 31.10.1993. In the absence of the respondent-plaintiffs, appellant-defendant forcibly occupied the property in the year 1999. The father of the defendants instituted the civil suit which was, vide judgment and decree dated

17.08.2007 partly decreed whereby the plaintiffs were restrained from interfering into the peaceful possession of the defendants except in due course of law and relief of declaration was declined.

Defendant no.1 contested the suit and alleged that his father was residing in the suit property after construction and had been in possession since 1984

The plaintiffs in support of the aforementioned pleadings examined eight witnesses and brought on record Ex.P1 to Ex.P18 whereas defendant no.1 examined three witnesses and brought on record Ex.D1 to Ex.D6.

Mr. R.S.Hooda, learned counsel appearing on behalf of the appellant-defendant no.1 submitted that previous suit for declaration filed by the father of the defendants did not decide the ownership while noticing the long and settled possession injuncted the respondent-plaintiffs herein and defendants therein. The demarcation report also did not prove any encroachment. In fact, it was in the ownership of appellant-defendant no.1.

I am afraid the aforementioned arguments are not sustainable, for, in the previous suit filed by the father of appellant-defendant, declaration of ownership was sought on the basis of adverse possession and the trial Court framed issue no.1 which reads as under:-

“1. Whether the plaintiffs have become owners of the suit property by way of adverse possession in the suit property in any manner?OPP”

The plea of adverse possession tantamounts to admitting the title of the defendants. In such circumstances, the trial Court granted the injunction restraining the defendants from interfering into peaceful possession except in due course of law. In such circumstances, identity of the property was not in dispute. The defendants have not been able to bring on record any document to establish the long and settled possession.

As an upshot of my findings, arguments of Mr. Hooda, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 16, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No