

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

RSA No.1404 of 2018(O&M)
Date of decision: 21.11.2019

Satwinder Singh Numberdar

... Appellant

Versus

Gurnam Singh @ Gurpreet Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Balbir Singh Jaswal, Advocate, for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 18.11.2014, and as even the appeal preferred against the said decree failed and was dismissed on 06.03.2017, appellant-defendant No.4 is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for separate possession by way of partition of the suit property bearing khasra No.1137/2 (3-19), as depicted in the site plan, situated at village Kaleke, Tehsil Baba Bakala, District Amritsar. And for injunction restraining the defendants from selling any specific portion thereof and raising any construction.

In brief, the case set out by him was that plaintiff and defendants No.1 to 3 were co-sharers in the suit property, whereas defendants No.4 to 9 were in its unauthorized possession. Further, owing to the property being joint there would always be a dispute amongst the co-sharers and, therefore, plaintiff requested the defendants to partition the suit property, but to no avail. Thus, the suit.

In the written statement filed by defendant No.4, he denied if the plaintiff or defendants No.1 to 3 were co-sharers in the suit property. It was also denied if defendants No.4 to 9 were in illegal possession. In fact, possession of the defendants was open and hostile to the true owners, and continuous since 1980. The defendant had even constructed a haveli in the suit property, which was being used for the past over 33 years. Thus, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that jamabandi (Ex.PC) revealed that plaintiff and defendants No.1 to 3 were co-owners of the suit property. The case set out by the plaintiff was that defendants No.4 to 9 were in unauthorized possession, but except defendant No.4 none of the defendants chose to contest the suit and were proceeded against ex parte. The plea set out by defendant No.4 that he had perfected his title by way of adverse possession remained unsubstantiated for lack of evidence. Nothing was brought on record to show as to when did the defendant enter into possession of the suit property, and from which date their possession, adverse to the true owner, commenced. If defendants No.4 to 9 were indeed in possession of the suit property since 1980, then khasra girdawaries for the said period would have reflected their possession over the suit property. Not

just that, defendant No.4 failed to produce any other evidence to substantiate his possession since 1980. Rather, adverse inference was required to be drawn against defendant No.4 for withholding the best evidence from the Court. On the contrary, evidence on record proved plaintiff and defendants No.1 to 3 to be the owners of the suit property to the extent of their shares. Even otherwise, once defendant No.4 had set up a plea of adverse possession, he could hardly deny title of the plaintiff and defendants No.1 to 3. Jamabandi (Ex.PC) revealed that plaintiff and defendants No.1 to 3 were co-sharers and, thus, the suit property was yet to be partitioned by metes and bounds. In the given situation, defendant No.4 having failed to substantiate his plea of adverse possession, the only and the inevitable conclusion that could be reached: the suit deserves to be decreed.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

21.11.2019
Rajan

Whether speaking / reasoned:	YES
Whether Reportable:	NO