

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3057 of 2017 (O&M)

Date of Decision: February 11, 2019

Cheti @ Nain Singh @ Prakashveer & another

...Appellants

Versus

Khubi & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Keshav Pratap Singh, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

CM No.7605-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 447 days in re-filing the appeal is condoned.

CM stands disposed of.

RSA No.3057 of 2017

Appellant-defendants have not been able to defend the suit for possession preferred by the respondent-plaintiff and were also not successful before the Lower Appellate Court.

Respondent-plaintiff alleged that three rooms/shops bearing Khewat/Khatoni No.812/889, Rect.No.108, Killa No.1 (0-3) was gair mumkin gait and was allotted to him by the Gram Panchayat of Village Rasulpur under the Haryana State Government Scheme vide registered certificate dated 22.06.2001. In lieu thereof, mutation No.2707 was

sanctioned and incorporated in the jamabandi for the year 2006-07. Plaintiff had gone on a pilgrimage and during the month of July, 2008, defendants forcibly occupied the same.

Defendants opposed the suit and denied the title of the plaintiff and alleged that the certificate of allotment was fake, false, sham and bogus. In fact, they had purchased the land from one Sadhu Ram vide sale deed Ex.D1 and had been in long and uninterrupted adverse possession since 24.06.1993.

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

- “1) Whether plaintiff is entitled for decree of possession as prayed for? OPP*
- 2) Whether suit of the plaintiff is not maintainable in the present form? OPD*
- 3) Whether the plaintiffs have no locus/standi and cause of action to file the present suit? OPD*
- 4) Whether the suit is barred by limitation? OPD*
- 5) Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD*
- 6) Whether the suit of the plaintiff has been properly valued? OPD*
- 7) Relief.”*

Plaintiff in support of the evidence, examined three witnesses and brought on record jamabandi Ex.P1, Akshijra Ex.P2, demarcation Ex.PW3/A and photocopy of mutation mark-A, whereas the defendants examined four witnesses, but did not bring on record any other evidence except site plan and naksha.

Mr. Keshav Pratap Singh, learned counsel appearing on behalf of the appellant-defendants submitted that respondent-plaintiff has

miserably failed to prove on record the title as the copy of the gift deed had not seen the light of the day. Jamabandi and mutation are not the documents of title. Plaintiff categorically admitted in cross-examination that he was not in possession. On the other hand, the long, settled and uninterrupted possession of the defendants had been proved. The gift deed, as per the provisions of Section 123 of the Transfer of Property Act, is to be followed by a transfer. Plaintiff miserably failed to prove the title, therefore, the demarcation and the jamabandi were inconsequential.

I have heard the learned counsel for the appellant-defendants, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the following reasons:-

- 1) Once the defendants had taken the plea of adverse possession, it tantamounts to admit the title of the plaintiff;
- 2) In order to establish the adverse possession, mere mentioning of the date would not suffice as there has to be categoric and cogent evidence. The aforementioned view is derived from the ratio decidendi culled out in Para Nos.11 to 16 in **Ram Nagina Rai & another Versus Deo Kumar Rai (D) by L.Rs & another, 2018(5) RCR (Civil) 398.**
- 3) There is a reference of allotment letter dated 22.06.2001. Photo copy of the same has been brought on record, but no such objection was raised, which is reflected from the memorandum of appeal preferred before the Lower Appellate Court.

All these factors if looked into cumulatively is not a ground to form a different opinion to bring the case within the realm of perversity.

For the reasons aforementioned, I do not find any illegality or

perversity in the concurrent findings, which are based on appreciation of oral and documentary evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

February 11, 2019
ramesh

(AMIT RAWAL)
JUDGE

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