

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

**RSA No.6265 of 2017 (O&M)
Date of Decision.03.04.2019**

Avtar Singh and another

..Appellants

Vs

Kewal Singh

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Bajaj, Advocate
for the appellants.

Mr. IPS Kohli, Advocate
for the caveator-respondents.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the judgment and decree of the lower Appellate whereby suit of the respondent-plaintiff for possession of land measuring 0 kanals 13 marlas comprised in Khewat/Khatoni No.318/409, Khasra No.66(0-13) dismissed by the trial Court, has been decreed.

The plaintiff alleged that vide sale deed dated 30.01.2009, he had purchased the land from Tirath Singh son of Dalip Singh. However, the property of defendant No.2 was on the Southern side and property bearing Killa Nos.67 and 68 on the Northern side was owned by defendant No.1. Both the defendants being husband and wife forcibly raised construction on the suit property on which they did not have any title.

Defendants opposed the suit and raised objection qua maintainability. On merits, it was stated that the residential house was constructed about 50 years ago

by demolishing the old one and had spent huge amount of ₹15 lakhs and set up adverse possession.

The trial Court on the basis of aforementioned pleadings framed issues and additional issues.

Plaintiff in support of pleadings examined himself as PW1 and brought on record Ex.P1 jamabandi, Ex.P2 Aks Sajra, Ex.P3 copy of sale deed and copy of khasra girdawari as Ex.PX whereas the defendants examined four witnesses and brought on record Ex.D1 to D7 i.e. site plan, radio licence, photographs and electricity bills etc., Ex.DW4/1 to EX.DW4/11 and report of SDO Ex.DX.

Mr. Bajaj, learned counsel appearing on behalf of the appellants submitted that aforementioned documents established long and settled possession and the date as well, therefore, the ingredients of adverse possession have been proved to the hilt. In such circumstances, the suit could not have been decreed as even the vendor from whom the plaintiff derived title did not step into the witness box.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit. The law with regard to adverse possession is no longer *res integra* in view of the ratio decidendi culled out by Hon'ble Supreme Court in **Gurudwara Sahib v. Gram Panchayat Village Sirthala and another** **2013 (4) R.C.R. (Civil) 703**. There has to be a specific date, month and year. No such evidence has been placed on record. *Animus possidendi*, thus, has not been proved. Plea of adverse possession

tantamounts to admission of title of some one else. If at all, there was some truth in the assertion of defendants, they could have set up a counter-claim challenging title of the plaintiff. In the absence of the same, decretal of the suit was inevitable.

In view of such circumstances, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 03, 2019
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No