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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.5969 of 2018 (O&M)
Date of Decision: 16.05.2019

Hardev Ram

.....Appellant

Vs

Tarsem Lal and others

....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Ms. Jasneet Mehra, Advocate for
Ms. Sheena Khanna, Advocate
for the appellant.

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RAJ MOHAN SINGH, J.

[1]. Plaintiff/appellant is in Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for permanent injunction.

[2]. Brief facts are that the plaintiff filed a suit for permanent injunction restraining the defendants from dispossessing the plaintiff or interfering in the possession of the plaintiff in respect of the suit property. Plaintiff claimed that he was owner in exclusive possession of the house fully detailed in the headnote of the plaint. Earlier the property was owned by Sarna uncle of the plaintiff. Sarna and Sibu were real brothers. There was a

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family settlement about 50 years ago and the plot in question had fallen to the share of Sibu @ Nasib Chand. Sarna had left the village after the family settlement and never came back to the village. Sibu was also brother of father of the plaintiff Pritu. He sold the property in question to the father of the petitioner vide oral transfer. Revenue record could not be updated due to fiduciary relationship. The plaintiff derived his title from his father Pritu, who was owner in possession of the property on the basis of oral sale.

[3]. Defendants contested the suit on numerous grounds and have denied the family settlement between Sarna and Sibu. Defendants also denied oral sale made by Sibu in favour of Pritu.

[4]. The plaintiff has also set up his title on the basis of adverse possession claiming himself to be in continuous possession of the suit property for more than 50 years through his father. The stand taken by the plaintiff is contradictory inasmuch as in the suit the plaintiff has claimed the property to be purchased by his father by means of oral sale. Earlier the property was held by Sarna on account of family settlement.

[5]. A mere possession or permissive possession does not demonstrate spectrum of adverse possession. For claiming adverse possession, the plaintiff must prove that his

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possession, is "*nec vi, nec clam, nec precario*", i.e. peaceful, open and continuous. The possession should be actual, open, notorious, exclusive and continuous for the required time as provided in law. The necessary ingredients of adverse possession as enumerated in ***Karnataka Board Wakf vs. Government of Indian 2004 (2) RCR (Civil) 702*** are that the adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. A party claiming adverse possession must prove that his possession is "*nec vi, nec clam, nec precario*" i.e. peaceful, open and continuous and it should be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the original owner and is actual, visible, exclusive, hostile and continued over the statutory period.

[6]. Plea of adverse possession is not a pure question of law, rather it is a mixed question of law and facts. A person who claims adverse possession, must show; (a) On what date, he came into possession; (b) What was the nature of his possession; (c) Whether the factum of possession was known to other party (d) How long his possession had continued; (e)His possession was open and undisturbed .

[7]. Plea of adverse possession has no equities rather this

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right has some instinct of piratical rights. The person has to plead from what date his possession became adverse, and he must disclose the necessary ingredients in his pleadings viz. date, nature of possession, factum of possession, how long they remain in possession and that their possession was open and undisputed. As earlier mentioned that plea of adverse possession is a mixed question of law and facts and therefore, it cannot be held to be a pure question of law.

[8]. The plaintiff cannot breath hot and cold in the same breath. On the one hand, plaintiff claimed the property to be owned and possessed by him on the strength of oral purchase by his father and at the same time he has claimed the property on the strength of adverse possession. Both the pleas cannot go simultaneously. The factum of oral purchase by Pritu has not been reflected in the revenue record, nor any evidence has been led by the plaintiff to prove that due to fiduciary relationship, the revenue record was not updated.

[9]. The civil suit filed by Tarsem Lal against Jasbir Singh is pending consideration. The oral sale in respect of property of more than Rs.100/- cannot be looked into for want of registration. Plea of adverse possession has not been proved by the plaintiff by means of any cogent evidence. Even otherwise, the adverse possession is based on the doctrine of "*nec vi, nec*

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clam, nec precario", i.e. peaceful, open and continuous.

[10]. Both the Courts below have appreciated the material on record while dismissing the suit. There is no misreading of evidence by the Courts below, nor the findings recorded by the Courts below are suffered with any perversity. No question of law worth cognizance is involved in the present case. The appeal is found to totally devoid of merits and is accordingly dismissed.

May 16, 2019 **(RAJ MOHAN SINGH)**
Atik **JUDGE**
Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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