

In the High Court of Punjab and Haryana at Chandigarh

**RSA- 9894 of 2018(O&M)
Date of Decision: 27.2.2019**

Satnam Singh

---Appellant

versus

Manmohan Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. A.P.S.Rehan, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings of fact whereby counter claim preferred by the defendants-respondents in a suit for permanent injunction filed by the appellant and his co-plaintiff-Narinder Singh (proforma respondent No. 4) was allowed by the trial court vide judgment and decree dated 4.5.2016 and appeals preferred by the appellant were dismissed by the Additional District Judge, Gurdaspur on 23.7.2018.

On January 09, 2019, order passed by this Court, reads as follows:-

“Counsel for the appellant has sought to raise an issue that counter claim preferred by the respondents is barred by limitation. Perusal of the judgments impugned would reveal that no such issue of limitation was pressed before the Courts below.

Counsel for the appellant prays for a short accommodation to place on record reply/written statement to the counter claim seeking possession of suit land on record.

Adjourned to 7.2.2019.”

Counsel for the appellant has expressed his inability to place on record the documents in terms of the aforesaid order and would further state that the appeal may be heard on available materials.

The sole submission made by counsel is that as counter claim preferred by the respondents (contesting) qua possession of suit land was barred by limitation, the courts have seriously erred by granting relief of possession while accepting counter claim preferred by the respondents.

The trial court, in para 18 of the judgment, has held that evidence led by the plaintiffs regarding their having become owner by way of adverse possession is beyond pleadings and cannot be read into evidence. Even if plea of the plaintiffs regarding adverse possession is taken into consideration, they have not specifically deposed as to when possession of the plaintiffs became adverse. The plaintiffs have not been able to show their adverse possession, therefore, counter claim preferred by the respondents cannot be held to be time barred and as such, the defendants are entitle to seek possession of the suit property. Counsel has not disputed these factual findings recorded by the trial court.

There cannot be dispute about settled position in law that an owner can file a suit for possession of land unless the person in possession is able to establish that he is in adverse possession of land that has ripened into title with lapse of time. In the case

at hand, the appellant (defendant in counter claim) did not raise any such plea of adverse possession, therefore, contention of the appellant that counter claim preferred by the respondents was barred by limitation, is without any foundation and has rightly been rejected by the courts.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. No order as to costs. As the appeal has been decided on merits, application for condonation of delay is of academic relevance.

(Rekha Mittal)
Judge

27.2.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No