

RSA-3103-2018 (O&M)
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA-3103-2018 (O&M)
Date of Decision: 04.02.2020**

Rajinder Mohan Gupta

.... Appellant

Versus

Mrs. Mary Gupta and others

...Respondents

**RSA-3111-2018 (O&M)
Date of Decision: 04.02.2020**

Rajinder Mohan Gupta

.... Appellant

Versus

Mrs. Mary Gupta and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Alok Mittal, Advocate
for the appellant.

Mr. V.K.Jindal, Senior Advocate with
Mr. Gopal Soni, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

By this judgment two appeals filed by the appellant arising from connected suits disposed of by a common judgment by the trial Court as well as appellant Court, shall stand disposed off.

Rajinder Mohan Gupta had filed a suit for declaration that he is owner in possession of House No.79-A, Sector 8, Panchkula and defendants to be restrained from interfering into his peaceful possession. Second suit was filed by Mrs. Mary Gupta and others against Rajinder Mohan Gupta

praying for relief of mandatory injunction directing Rajinder Mohan Gupta to hand over vacant possession of House No.79-A, Sector 8, Panchkula along with mesne profit @ Rs.1,00,000/- per month from 01.09.2012. Both the suits being connected were ordered to be consolidated and tried together.

The plaintiff-Rajinder Mohan Gupta claims that he is owner of property as the property was purchased from Joint Hindu Family Funds in the name of elder brother Shri B.S.Gupta, who had applied for and was allotted two plots. First one is House No.79-A, Sector 8, Panchkula, whereas another plot is No.579-A, Sector 8, Panchkula. It was pleaded that entire price of the plot was paid out of Joint Hindu Family Funds. Later on a family settlement was arrived at and the plaintiff was acknowledged to be owner of House No.579-A, Sector 8, Panchkula, whereas plot No.579-A, Sector 8, Panchkula came to the share of Shri B.S.Gupta.

Defendant-Mrs. Mary Gupta, widow of late Shri B.S.Gupta along with her children contested the suit and pleaded that both the plots were owned by Shri B.S.Gupta and Mrs. Manny Gupta and after the death of Shri B.S.Gupta, his share was also inherited by Mrs. Mary Gupta and her children.

Both the Courts on appreciation of evidence have recorded a finding that the plaintiff-Rajinder Mohan Gupta has failed to prove his case. He failed to lead reliable/cogent evidence to prove the alleged family settlement. He further failed to prove that the price of the plots was paid out of Joint Hindu Family Funds.

This Court has heard learned counsel for the parties at length and with their able assistance has gone through the judgments passed by the

Courts below.

Learned counsel appearing for the appellant has submitted that Shri B.S.Gupta had executed a notarized General Power of Attorney in favour of plaintiff-appellant-Rajinder Mohan Gupta on 29.10.1982. He has further submitted that from the aforesaid Power of Attorney, it is apparent that in a family settlement, House No.79-A, Sector 8, Panchkula had come to the share of Rajinder Mohan Gupta.

This Court has gone through the Power of Attorney dated 29.10.1982 and it is apparent that Shri B.S.Gupta had appointed his younger brother Rajinder Mohan Gupta as an attorney to manage and construct the building on the plot. There is no reference to any family settlement. Even no power to transfer the property has been given under the aforesaid power of attorney.

Learned counsel for the appellant further submitted that since Mrs. Mary Gupta had disputed the execution of Power of Attorney dated 29.10.1982, therefore, appellant-Rajinder Mohan Gupta become owner by way of adverse possession and his continuous possession remained uninterrupted for more than 12 years.

On a Court question, learned counsel for the appellant admitted that neither any issue on the question as to whether Rajinder Mohan Gupta have become owner by way of adverse possession was got framed nor any argument thereon was raised before the Courts below.

This Court cannot permit to appellant to raise new plea at the stage of Regular Second Appeal particularly when it is required to be adjudicated on the basis of evidence.

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Keeping in view the aforesaid facts, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

(ANIL KSHETARPAL)
Judge

04.02.2020
Pardeep

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No