

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

**RSA-370-2021 (O&M)  
Date of Decision:16.08.2021**

**Harkesh (since deceased) through his LRs and others      ....Appellants**

**VS**

**Karan Singh and others      ....Respondents**

**CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL**

**Present:**    Mr. Sanjay Mittal, Advocate for  
                 Mr. Sandeep Sharma, Advocate  
                 for the appellants

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**SUDHIR MITTAL, J. (Oral)**

This second appeal has been filed by defendants No.1 to 3 as the learned First Appellate Court has set aside the finding of adverse possession returned in their favour by the trial Court.

The suit was filed for a declaration that Sale Deed dated 31.03.2010 executed by defendant No.4 in favour of defendant No.3 in respect of 13 marla land out of 2 kanal 7 marla land (Gair Mumkin Abadi) was illegal and void and consequently mutation entered on its basis deserves to be set aside. The possession of the said parcel of land measuring 13 Marla was also sought. The suit was partly decreed by the trial Court. The Sale Deed dated 31.03.2010 was upheld but mutation entered on its basis was declared to be illegal. A finding of adverse possession was also returned in favour of defendants No.1 and 2. The judgment and decree of the trial Court was challenged by way of appeal, which was allowed partly. The finding of adverse possession was set aside.

Learned counsel for the appellants has submitted that the plaintiffs

themselves have proved the case of the appellants. They have pleaded that

defendants No.2 to 3 were in possession of 13 marla land out of 2 kanal 7 marla land comprised in Gair Mumkin Abadi since the year 1982. This pleading is sufficient to establish adverse possession and, thus, the learned Lower Appellate court was in error in setting aside the finding of the trial Court.

The argument cannot be accepted because admittedly, defendant No.3 is co-sharer. The possession of one co-sharer is deemed to be possession of all, unless and until the said co-sharer can establish exclusive possession with the intention to oust the right of the other co-sharer.

Learned counsel for the appellants has not been able to point out any evidence, which shows ouster. No other point has been raised.

Thus, the appeal is without any merit and is dismissed.

( SUDHIR MITTAL )  
JUDGE

**16.08.2021**

*Poonam Negi*

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No