

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

**RSA No. 263 of 2021 (O&M)
Date of Decision: September 09, 2021**

Roshan Lal Appellant(s)

Versus

Hans Raj Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rahul Jaswal, Advocate
for the appellant.

LISA GILL, J.

Appellant-defendant has preferred this appeal challenging judgment and decree dated 13.03.2013, passed by learned Civil Judge (Junior Division), Panipat as well as judgment and decree dated 26.10.2015, passed by learned District Judge, Panipat.

Brief facts necessary for adjudication of the case are that plaintiff/respondent Hans Raj filed a suit for possession of the house in question. Plaintiff averred that Ram Kishan son of Banwari i.e. father of the parties was owner in possession of the suit property, which was self acquired property of Ram Kishan. Decree dated 25.11.1995 in Civil Suit No.825 of 1995 was suffered by Ram Kishan in favour of the plaintiff, therefore, plaintiff became owner in possession of the suit property. Present appellant/defendant, who is the real brother of the plaintiff, challenged said judgment and decree dated 25.11.1995, wherein Ram Kishan was also impleaded as party. Ram Kishan in the said suit asserted that property in

question was his self acquired property and he has suffered a decree in favour of plaintiff voluntarily. This suit filed by present appellant-defendant was dismissed vide judgment and decree dated 09.12.2002. Roshan Lal filed an appeal challenging above said judgment and decree dated 09.12.2002. Said appeal was partly accepted vide judgment and decree dated 11.12.2003 and plaintiff Hans Raj, who was arrayed as defendant no.1 in the said suit, was restrained from interfering in the possession of Roshan Lal except in due course of law. Claim of Roshan Lal for declaring him as owner of the property was dismissed. Said judgment and decree dated 11.12.2003 was not challenged by Roshan Lal but he filed another civil suit for possession with consequential relief of permanent injunction, which was dismissed by the learned Additional Civil Judge (Sr. Division), Panipat vide judgment and decree dated 21.04.2007. Appeal filed by Roshan Lal qua the said decree was dismissed by the learned Additional District Judge, Panipat vide judgment and decree dated 28.07.2007. Plaintiff in this case pleaded that Roshan Lal misused his position of being real brother of plaintiff and obtained signatures of plaintiff on blank papers and used the same for preparing a compromise in which plaintiff is alleged to have relinquished rights of ownership in property in dispute. As possession of the suit property was not being handed over, plaintiff filed a suit for possession.

Defendant/present appellant contested the suit while taking various preliminary objections in the written statement. It is stated that defendant was in actual physical possession of the suit property w.e.f. 1991. Decree dated 25.11.1995 suffered in favour of Hans Raj by Ram Kishan was stated to be illegal, null & void and not binding upon the defendant. It is

further stated that Ram Kishan was not in possession of suit property at the time of passing of judgment and decree dated 25.11.1995. Thus, he could not have delivered its possession to the plaintiff. Furthermore, it is averred that a compromise was arrived at between the parties in which plaintiff and Ram Kishan (father of the parties) admitted ownership and possession of defendant Roshan Lal over the suit property and he took over the entire share of defendant's property situated at village Chulkana. It is averred that defendant thus acquired possession by way of adverse possession as well. Moreover, defendant claimed not to have been correctly and properly represented by his counsel and he was a victim of atrocities inflicted upon him by plaintiff and other family members. Dismissal of the suit was sought.

Replication was not filed. Following issues were framed by the learned trial Court on the basis of the pleadings:-

- i. Whether the plaintiff is entitled for decree of possession of the suit property as alleged in the plaint if so to what effect? OPP.
- ii. Whether the suit is not maintainable? OPD
- iii. Relief.

Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case decreed the suit filed by plaintiff while observing that plea of adverse possession taken by defendant was unsustainable as his possession is clearly not proved to be peaceful and continuous. Reference was made to the earlier judgments and decrees

passed by the various Courts of competent jurisdiction, wherein plaintiff was held to be owner of the suit property.

Appeal filed by the defendant/appellant was dismissed by learned District Judge, Panipat, vide impugned judgment and decree dated 26.10.2015. Aggrieved therefrom this regular second appeal has been filed.

Learned counsel for the appellant argues that both the learned Courts below have grossly erred in law and on facts in passing the impugned judgments and decrees. It is vehemently argued that the learned Courts below have not appreciated the fact that a settlement was arrived at between the parties and said settlement is duly mentioned in judgment dated 11.12.2003, Ex.P2. Furthermore, as the appellant was not correctly and properly represented by his counsel, findings of the Courts in judgments and decrees dated 11.12.2003 and 21.04.2007 are not binding upon the appellant. It is submitted that adverse possession of the appellant over the suit property is clearly proved. Moreover, suit filed by the plaintiff is barred by Order 2 Rule 2 CPC. Plaintiff could easily have agitated his claim for possession in Civil Suit No.825/1995, titled 'Hans Raj Vs. Ram Kishan' but for reasons best known to the plaintiff, defendant was not even made a party. It is thus prayed that this appeal be allowed. Judgments and decrees passed by both the Courts below be set aside.

I have heard learned counsel for the appellant and have gone through the record of the case, which was requisitioned.

Learned counsel for the appellant does not dispute that property in question was self acquired property of Ram Kishan, father of the parties.

Learned counsel is also unable to deny passing of judgment and decree dated

25.11.1995 as well as dismissal of present appellant's suit challenging the said judgment and decree. It is a matter of record that judgment and decree dated 11.12.2003 in Civil Appeal No.6/2003 has attained finality. Plea of adverse possession raised by appellant is devoid of any merit. This is so for the reason that the appellant-defendant claims himself to be in possession of the suit property since 1991-1992 and admittedly parties are litigating over the suit property since 1996, after passing of the consent decree in favour of the plaintiff in 1995. Therefore, to hold that appellant was in peaceful and open possession of the suit property, is not justified. Learned trial Court specifically referred to cross-examination of the appellant who deposed as DW1, wherein he has admitted that his earlier counsel represented him correctly, therefore, he has not taken any action against him, therefore, plea of the appellant that he was not represented correctly, has also been rightly negated.

Furthermore the alleged settlement sought to be relied on by the appellant is of no avail to him. Said settlement has been duly considered as is reflected in judgment and decree dated 11.12.2002. This settlement was not found sufficient to grant right of ownership to the present appellant. Judgment and decree dated 11.12.2002 has admittedly attained finality, therefore, it is not open to the appellant to agitate the same. It is relevant to note at this stage that an application filed alongwith this appeal, to place on record this undated settlement, as referred to in above said judgment and decree dated 11.12.2002, by way of additional evidence has been dismissed by way of separate order today.

Similarly, there is no merit in the argument that the suit is barred by Order 2 Rule 2 CPC in the given factual matrix as discussed in the foregoing paras. It is also argued that judgment and decree dated 25.11.1995 is vitiated by fraud, therefore, is null and void qua the rights of the appellant. Such an argument is clearly misconceived in view of dismissal of appellant's suit challenging the said judgment and decree.

It is pertinent to note at this stage that there is a delay of 1623 days in filing of this regular second appeal. Reason for the delay mentioned in the application is that appellant was under the impression that as there is a family settlement regarding the property, there is no requirement of filing an appeal and moreover due to some personal difficulty, appellant was unable to contact his lower Court counsel. Appeal was filed after execution petition was filed by the respondent/plaintiff. The applicant/appellant is unable to furnish any explanation, leave alone a plausible one for the colossal delay in filing of this appeal.

No question of law much less a substantial question of law is involved for consideration in this appeal. Both the learned Courts below have rendered concurrent findings of fact after proper appreciation of evidence on record, which calls for no interference in this regular second appeal.

No other argument has been raised.

This appeal is accordingly dismissed on merits as well as latches, with no order as to cost.

Pending application/s, if any, is/are decided accordingly.

September 09, 2021
Sunil

(**LISA GILL**)
JUDGE

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