

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

RSA-614-2020 (O&M)

Date of decision: 12.09.2022

Inderjit Singh and others

....Appellants

Versus

Karam Singh (since deceased) through Lrs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Amit Jain, Sr. Advocate with
 Mr. Varun Prakash, Advocate for the appellant
 Mr.A.S.Manaise, Advocate for respondent no.1
 Mr. Barjinder Singh, Advocate for
 Mr. Prateek Pandit, Advocate for respondent no.2(i), (ii)
 and (iv)

ANIL KSHETARPAL, J (Oral)

While assailing the concurrent findings of fact arrived at by the First Appellate Court, the defendants have come up in the present appeal. The plaintiff's suit for grant of decree of possession with respect to 73 kanals and 18 marlas of land, though dismissed by the trial court, has been decreed by the learned First Appellate Court.

Some peculiar facts are required to be noticed.

The suit land was purchased by Sh.Puran Singh in a restricted auction held on 02.06.1970. The auction was restricted to the members of the Scheduled Caste. The payment was to be made in instalments. Sh.Puran Singh entered into an agreement to sell in favour of Sh. Karam Singh (the plaintiff) on 01.11.1972. It is the case of the plaintiff that he paid the instalments and on completion thereof, the sale certificate was issued in favour of Sh.Puran Singh on 28.11.1980. Since as per the terms and conditions of the allotment Sh.Puran Singh could

not sell the property, therefore, the agreement to sell was entered. It is the case of the plaintiff that Sh.Puran Singh after the execution of the sale deed dated 15.12.1981 failed to get it registered. Thus, the plaintiff filed a suit for specific performance of the sale deed. During its pendency Sh.Puran Singh executed the sale deed in favour of Sh.Karam Singh (plaintiff) on 29.11.1983.

Defendant no.1 to 5 while contesting the suit asserted that Sh.Puran Singh through his attorney Sh.Gurbachan Singh already executed a registered sale deed in favour of Smt. Sita Rani on 07.05.1987 and after her death, defendant no.1 to 5 became the owners in possession. The trial court dismissed the suit on the ground that the sale deed dated 07.05.1987 has not been challenged. The First Appellate Court while reversing the aforesaid finding has decreed the suit.

Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook. Learned senior counsel representing the appellants contends that defendant no. 1 to 5 have perfected their title by way of adverse possession, particularly when the suit has been filed on 22.10.2011. He submits that the possession of the appellants shall be treated as adverse on the date the sale deed was executed by Sh.Puran Singh in favour of Smt. Sita Rani.

This Court has considered the submissions made by the learned counsel representing the appellants, however, finds no substance therein. It is the case of the appellants that Smt. Sita Rani was put in possession by Sh.Puran Singh, on execution of the registered sale deed on 07.05.1987. Thus, the possession of Smt. Sita Rani or her successor-

in-interest was a permissive possession referable to the sale deed executed by Sh.Puran Singh. Learned senior counsel representing the appellants submits that the possession of the appellants may be permissive qua Sh.Puran Singh, however, it shall be adverse to the plaintiff (Sh.Karam Singh). It may be noticed that Sh.Karam Singh claims the property through Sh.Puran Singh. Thus, Sh.Karam Singh has stepped into the shoes of Sh.Puran Singh.

For proving the adverse possession, one of the necessary ingredients is to prove that the party is in open, hostile and continuous possession from a particular date or time without any obstruction by anyone. In the present case, defendants entered into the possession on the basis of the sale deed. Their possession was permissive as permitted by Sh.Puran Singh. The defendants have failed to prove as to when their possession became adverse. In any case, the sale deed in favour of Sh.Karam Singh is before the sale deed in favour of Smt. Sita Rani. Thus, the rights of Sh.Karam Singh are superior to Smt. Sita Rani or defendant no.1 to 5. Hence, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

12.09.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE