

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

108

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RSA No.2219 of 2022 (O & M)  
Date of Decision : 21.10.2022

Akku Ram (deceased) through LRs

..... Appellants

Versus

Sunil Kumar and another

..... Respondents

**CORAM : HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present : Mr. G.S. Nehra, Advocate, for the appellants

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**TRIBHUVAN DAHIYA, J.**

**CM No.7684-C of 2022:**

This is an application for condonation of 14 days delay in re-filing the present appeal.

For the reasons mentioned in the application, the same is allowed.  
Delay of 14 days in re-filing the present appeal is condoned.

**CM No.7682-C of 2022:**

This is an application for condonation of 131 days delay in filing the present appeal.

For the reasons mentioned in the application, the same is allowed.  
Delay of 131 days in filing the present appeal is condoned.

**RSA No. 2219 of 2022 (O & M):**

1. This is defendants' second appeal against the concurrent findings recorded by both the Courts below.

2. The respondents/plaintiffs (hereinafter referred to as 'the

plaintiffs') filed a suit for possession of the property shown in red colour in the site plan which is part of Rect. No. 183, *killa* no. 37/2/2/1/1/1/1/1 measuring 13 *kanal* 15 *marla* of its 10/275<sup>th</sup> share, i.e., 10 *marla* at the cost of defendants. The plaintiffs claimed themselves to be the owners on the strength of registered sale deed *vasika* no. 3765 registered on 20.9.2005 and supplementary sale deed *vasika* no. 998 dated 14.5.2010, executed by Dinesh Kumar and others the previous owners, as per *jamabandi* for the year 1998-99. Mutation on that basis were sanctioned in favour of the plaintiffs on 2.12.2005 and 30.7.2010 respectively.

3. The suit was contested by the appellants/defendants (hereinafter referred to as 'the defendants') claiming that the suit property was never delivered to the plaintiffs by their vendor or anybody else. The defendants claimed that before them one Salekh Chand remained in possession of the property. He perfected his title by adverse possession, asserted to the alleged vendors of the plaintiffs in August 1979. Salekh Chand resided in the property by constructing rooms and tin-shed there. He subsequently surrendered possession to Madan Lal son of Ghisa Ram. This Madan Lal surrendered possession to the defendants, and this fact was to the knowledge of the plaintiffs and their family members in 2005. It was, therefore, claimed that the defendants' possession of the suit property is based upon perfected title of Salekh Chand by adverse possession, which was opened and hostile to the knowledge of the alleged vendors of the plaintiffs.

4. Upon pleadings of the parties, the following issues were settled by the trial Court:

1. Whether the plaintiffs are entitled to seek a decree for possession by way of demolition of construction at the expenses of defendant from

property shown with red colour in the site plan marked BEFGHIJ described in para no.1 of the plaint? OPP

2. Whether the plaintiffs have no cause of action and locus standi to file the present suit? OPD

3. Whether the plaintiffs are stopped by their own act and conduct to file the present suit? OPD

4. Whether the plaintiffs have not properly valued for the purpose of court fee and jurisdiction of the Court? OPD

5. Relief.

5. The suit was adjudicated on the basis of the findings on Issue No.1 only. On the remaining issues the defendants led no evidence nor pressed the same, and were accordingly decided against them.

6. While recording findings on Issue no.1, both the Courts have held that DW-3, Shiv Om son of Salekh Chand, in his deposition nowhere stated that his father had constructed rooms and tin-shed over the suit property, as has been pleaded by the defendants. Further, this witness in his deposition referred to an agreement to sell dated 27.3.2005, Ex. D-3, said to have been executed by Salekh Chand in favour of Akku (predecessor-in-interest of the defendants), but there is no pleading to that effect in the written statement. It was further held by the Courts below that the writing, Ex.D-3, had interpolations, and, therefore, the same could not be taken to be a genuine document. The second document, Ex. D-2, is another agreement to sell dated 11.6.2005, said to have been executed by Madan Lal with respect to the property in dispute in favour of Akku (predecessor-in-interest of the defendants). This document is also full of cuttings, which could not be explained by DW-2 Madan Lal. Rather, he admitted that in Ex.D-2, house number of the property is not mentioned. Even the stamp paper for drafting the agreement to sell was not purchased by him.

This witness was, accordingly, not believed. It has further been observed that

DW-3 did not support pleadings in the written statement. He nowhere stated Salekh Chand perfected his title of the suit property on the basis of adverse possession from August 1979. Therefore, neither any of the agreements to sell (Ex.D-2 or Ex.D-3) could be proved by the defendants, nor any other evidence could be brought on record to establish that their predecessor-in-interest, Salekh Chand, had perfected his title by way of adverse possession over the suit property.

7. Both the Courts below have further concurrently held that the house tax receipts Ex.D-4 to D-12, relied upon by the defendants to prove their possession of the suit property, are only from the year 2006 to 2008. Also the electricity bills Ex.D-22 to D-25 are of the year after 2008, i.e., subsequent to institution of the suit in question. Therefore, no evidence could be placed on record to prove possession either of Salekh Chand or Madan Lal, predecessor-in-interest of the defendants, for the last more than thirty years which is pleaded case of the defendants.

8. Learned counsel for the defendants could not point out any error of law in the concurrent findings recorded by the Courts below. He has only argued that defendants' predecessor-in-interest actually constructed a house over the suit property which amount to assertion of their absolute title to the plaintiffs' knowledge. The argument has no merit since there is no evidence that any house over the suit property was constructed by Salekh Chand. It has not been testified even by DW-3, Shiv Om son of Salekh Chand, that any such house or rooms or tin-shed was ever constructed there. Besides, the electricity bills as well as house tax receipts relied upon by learned counsel in this regard are also of no help, since the same pertain only to the years 2006 to 2010, as afore mentioned.

9. In view of the aforesaid, there is no ground to interfere with the well reasoned findings recorded by both the Courts below. No substantial question of law arises for consideration either.

10. Dismissed.

11. Since the main case is dismissed, pending miscellaneous application(s), if any, is rendered infructuous and disposed of accordingly.

(TRIBHUVAN DAHIYA)  
JUDGE

21.10.2022  
*Ashwani*

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|-------------------|---|--------|
| Speaking/Reasoned | : | Yes/No |
| Reportable        | : | Yes/No |