

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

208

RSA No.3967 of 2019 (O&M)
DATE OF DECISION : 7th FEBRUARY, 2022

Joginder Lal

.... Appellant-Defendant

Versus

Jagdish Lal

.... Respondent-Plaintiff

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

=====
In virtual Court
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Present : Mr. Himanshu Sharma, Advocate for the appellant.

Mr. Hitesh Sharma, Advocate for the respondent.

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RAJBIR SEHRAWAT, J. (Oral)

1. The present appeal has been filed challenging the judgment and decree dated 29.04.2019 passed by the Additional District Judge, Ludhiana; along with judgment and decree dated 30.11.2017 passed by Civil Judge (Junior Division), Ludhiana, whereby the suit filed by the plaintiff-respondent, for seeking possession and permanent injunction, was decreed by the Courts.

2. The parties herein are referred as the plaintiff and the defendant as they were referred in the original suit.

3. Briefly stated the facts of this case are that the suit property measuring 50 Sq. Yards, which was mentioned in the head-note, was purchased by the plaintiff-Jagdish Lal from one Avtar Kaur vide sale deed dated 28.09.1992. Accordingly, he became owner in possession of

the same. The plaintiff started business of hand pump/sanitary ware in the suit property. The plaintiff met with an accident in the year 2006 and he had to leave his work. The defendant requested the plaintiff to permit him to do the business in the property for three months, to which the plaintiff had agreed. After expiry of three months when the plaintiff asked the defendant to vacate the said property; he refused to do so. Hence, the suit was filed.

4. Pursuant to the notice, the defendant-appellant, who is the brother of the plaintiff, filed written statement asserting therein that the defendant is the owner in possession of the suit property. The electric meter is installed in the name of the defendant, who is recorded as owner in the record of the Corporation. The defendant is in possession of the suit property since 1993. Hence, his possession has become hostile. Therefore, he has become owner by way of adverse possession. The suit property was purchased by father of the defendant from Avtar Kaur and the original sale deed is in possession of defendant.

5. The parties led their evidence. After hearing the arguments of the parties and appreciating the evidence the suit of the plaintiff was decreed in his favour. Feeling aggrieved against the same, the defendant had filed first appeal before the Additional District Judge, Ludhiana. However, the said appeal was also dismissed. Accordingly, the present appeal has been preferred by the defendant in the suit; questioning the concurrent findings, as well as, judgment and decrees passed by the Courts below.

6. Arguing the case, the learned counsel for the appellant-defendant has submitted that the evidence in the case shows that the

defendant has been in possession of the suit property since 1993, therefore, by way of adverse possession he has become owner of the suit property. The counsel has further submitted that the plaintiff himself has admitted in the cross-examination that the defendant was in possession in the suit property since 1993. Therefore, the story made up by the plaintiff, qua giving the shop in question for three months, is not sustainable. Since the defendant-appellant had become owner of the suit property, therefore, the court could not have passed the order granting possession in favour of the respondent-plaintiff.

7. On the other hand, the counsel for the respondent-plaintiff has submitted that the property was purchased by the plaintiff. The defendant is his real brother. Being real brother, earlier the defendant used to assist the plaintiff in his business, however, later on the defendant had stopped assisting him. Accordingly, when the plaintiff could not carry on business on his own because of unavailing circumstances, then the defendant had taken permission to use the said property for a period of three months. When he refused to vacate the property in question, only thereafter the suit has been filed. Qua the adverse possession, the counsel for the respondent-plaintiff has submitted that in the written statement the defendant had claimed himself to be the owner of the suit property. Since he claimed to be the owner, therefore, he cannot even raise plea of adverse possession. Moreover, the defendant has not led any evidence to show as to on which date he entered in the property and in what capacity. On the other hand, the plaintiff has pleaded and proved that with the defendant it was permissive possession, which the defendant had refused to vacate. Therefore, it is submitted that both the courts

below have rightly recorded the finding that the defendant-appellant has failed to establish the fact of adverse possession. Hence, the suit has rightly been decreed.

8. Having heard the counsel for the parties, this court finds substance in the argument raised by counsel for the respondent-plaintiff. The fact that both the courts below are concurrent in their findings, restricts the scope of this appeal to minimum. Merely because a different opinion is possible, would not be a ground to set aside the findings recorded by the Courts below. This court finds that otherwise also courts below have rightly recorded the findings qua the defendant not being in adverse possession of the property.

9. The pleading and the record shows that the defendant had, in fact, raised the claim of being an owner of the property in question, claiming the purchase in favour of the plaintiff to be *benami* property. However, no such evidence could be led in favour of this claim to substantiate the title in favour of the defendant. On the other hand, the evidence led on file in the form of sale deed Exhibit PW-2/1, clearly establishes the fact that it is the defendant-respondent, who is having the title over the property. Hence, on the question of title, the appellant has totally failed to impeach the title of the respondent-plaintiff. This court also finds that the courts below have rightly recorded the findings that the defendant has failed to bring on record anything to suggest as to on what date he entered in the property and in what capacity. In the absence of any such record, the plea and the evidence led by the plaintiff that the defendant was put in permissive possession of the property, which the defendant refused to vacate later on; gets credence. Hence, there is

nothing wrong in the finding recorded by the courts below in rejecting the plea of the defendant qua adverse possession.

10. No other argument was raised.

11. In view of the above, this court does not find anything sufficient to interfere with the concurrent findings recorded by the courts below. Hence, finding no merit in the present appeal, the same is dismissed.

12. All the pending applications, if any, stand disposed of accordingly.

7th FEBRUARY, 2022
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

No

Whether Reportable:

Yes

No