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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-934-2021 (O&M)

Date of Decision:12.07.2022

Avtar Singh and another

.. Appellants

Vs.

Gurmej Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. K.B.S. Mann, Advocate for the appellants.

...

Manoj Bajaj, J. (Oral)

Appellants (Defendants) have preferred this regular second appeal to challenge the judgment and decree dated 18.12.2019, passed by the Addl. District Judge, Tarn Taran in Civil Appeal No.41/25.07.2018, whereby it has affirmed the judgment and decree dated 02.07.2018, passed by the Civil Judge (Jr. Divn.), Patti in Civil Suit No.146 of 04.10.2016, decreeing the suit for possession filed by the respondents (plaintiffs).

Briefly stated the facts of the case as per the plaint are that plaintiffs no. 9 to 11 are minors sons and daughter of Kuldeep Singh, and are living under the care and maintenance of their mother (plaintiff no.8), who has no adverse interest against them. It is alleged that the plaintiffs are co-sharer/owners of land measuring 12 kanals 5 marlas bearing khata no. 147, 148/141/1, khatoni no.487, khasra no. 180 (12-5) situated in Village Kirrian, Tehsil Patti, District Tarn Taran as per jamabandi for the year, 2010-11. Kuldeep Singh co-sharer has died, leaving behind plaintiffs No. 8 to 11 as his legal representatives, therefore, they are made party to the present suit. Joginder Kaur wife of Shangara Singh has also died, leaving

behind plaintiff's No. 3 to 5 as her legal heirs, therefore, they are also made party to the present suit. The plaintiffs submit that upon demarcation of their land, they came to know that defendants have encroached land measuring 2 kanal 3 marlas i.e. part of khasra No.180 from Eastern side and have made illegal construction in the portion which is shown in red colour in the site plan attached with the plaint about 5-6 years back. The plaintiffs made several requests to the defendants to vacate the possession of encroached area and they promised to give equal area to the plaintiffs from their own land, but they failed to fulfill their promise and openly declared that they will not hand over the possession of suit property to plaintiffs. The defendants are very high headed persons, who are threatening to transfer the possession of suit property to any other person of their choice forcibly, illegally for which they have no right, title or interest to do so and if the defendants succeed in their mission, then the plaintiffs shall suffer an irreparable loss which will not be compensated in terms of money. Hence, the present suit has been filed.

The claim of the plaintiffs was contested by defendants by way of filing a written statement, who have raised all kinds of preliminary objections relating to the maintainability of the suit and on merits, they had set up a plea of adverse possession and specifically pleaded that since the time of consolidation, they are in continuous possession of land in question.

After completion of pleadings of the parties, the civil Court framed in all seven issues, and thereafter, the parties adduced their respective evidence and considering the same, the Civil Judge (Jr. Divn.), Patti vide judgment and decree dated 02.07.2018 proceeded to decree the suit.

Aggrieved against the said judgment and decree dated 02.07.2018, the appellants/defendants preferred appeal before the Addl. District Judge, Tarn Taran, but the same was dismissed by way of impugned judgement and decree dated 18.12.2019. Hence this regular second appeal.

Learned counsel for the appellants has argued that the land in question is occupied by defendants for a long time and they have constructed their house. He submits that the findings returned by the trial Court as well as the Appellate Court are not founded upon correct appreciation of evidence on record, therefore, the interference is warranted by exercising of jurisdiction under Section 100 C.P.C. He prays for setting aside the judgments and decree of the Courts below.

During the course of hearing, it is not disputed that except for the bald averments set up in the written statement and in their deposition before the Court regarding their adverse possession, no documentary evidence of any kind was adduced by them to establish their stand.

After hearing the learned counsel, considering the pleadings of the parties and evidence on record, this Court finds that the plaintiffs have relied upon the evidence in the shape of Ex.P-1 and P-2 (site plan as well as jamabandi) and the same has been correctly appreciated by the civil Court and the said findings have been affirmed by the Appellate Court. Thus, the evidence adduced by appellants (defendants) is not enough to prove their adverse possession and the perusal of the impugned judgments passed by the Civil Judge (Jr. Divn.), Patti as well as First Appellate Court reveal that the concurrent findings returned on the material issues are based upon proper appreciation of the evidence. As a result of this discussion, this Court is of the opinion that the appeal does not involve any substantial

question of law and is devoid of merits.

Resultantly, the appeal fails and is dismissed.

12.07.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No