

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

RSA-4799-2019 (O&M)

Date of decision : 05.09.2022

Sandeep Kumar

...Appellant

Vs.

Jetha Ram and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Satbir Singh Gill, Advocate
for the appellant.

MANOJ BAJAJ, J.

Appellant (defendant) has preferred regular second appeal to challenge the judgment and decree dated 02.09.2019 passed in Civil appeal No.145/2019 by first appellate Court, affirming the judgment and decree dated 20.03.2019 passed by Civil Judge (Junior Division) Ellenabad whereby the suit for possession filed by plaintiffs was decreed.

Briefly, the facts of the case are that plaintiffs (respondents) filed suit for possession pleading that their father, namely, Puran Ram was owner in possession of land measuring 8 marlas comprised in khasra No.421, khewat No.1307, khatoni No.1716 situated at Village Bhuratwala, Tehsil Ellenabad, District Sirsa and after his death, plaintiffs being his legal heirs inherited the said property. As per the revenue record, the land in question still exists in the name of Puran Ram and defendant (appellant) is in unauthorized possession of the suit land. On 15.07.2016, Revenue Authorities demarcated the land and reported that the same is illegally occupied by defendant. When the defendant started threatening the plaintiffs by raising further constructions, the plaintiffs brought the suit.

The defendant contested the suit by filing his written statement, wherein he took preliminary objections regarding its maintainability, cause of action, concealment of true and material facts etc. and on merits, it was pleaded that defendant's father purchased the property from one Krishan son of Birbal Acharya twenty years back and paid Rs.1,27,000/-, whereupon possession of the property was delivered to his father. After the death of defendant's father, he became owner of suit land. Further, while denying the other averments in the plaint, it was prayed that the suit be dismissed.

Thereafter, the trial Court framed the issues and after considering the evidence adduced by the parties, decreed the suit vide judgment and decree dated 20.03.2019. Being dissatisfied with the judgment and decree dated 20.03.2019, defendant filed first appeal and the same was also dismissed vide impugned judgment and decree dated 02.09.2019. Hence this regular second appeal.

Learned counsel for the appellant has argued that as the defendant/appellant was in adverse possession of the suit property, who constructed the house long back and plaintiffs never objected to the same, therefore, defendant is not required to prove his ownership of the suit property. He has argued that the Courts have not carefully examined the evidence of the parties and decreed the suit. According to him, the appellate Court has also failed to exercise appellate jurisdiction while upholding the judgment and decree passed by the trial Court, therefore, interference is warranted by this Court.

After hearing learned counsel and considering the material on record, this Court finds that in the written statement, defendant had taken a

categoric stand that the property in question was purchased by his father from one Krishan son of Birbal Acharya against a total sale consideration of Rs.1,27,000/-, and since then, the possession of the property is with him. A perusal of the judgment and decree passed by the trial Court shows that neither any averment regarding adverse possession was made by defendant in the written statement, nor any issue was got framed in this regard, and apart from it, the plea of ownership raised by him was not proved by leading any convincing evidence. On the other hand, the plaintiffs have produced the documentary evidence including the revenue record and mutation and upon considering the same, the trial Court returned the findings on material issues in favour of the plaintiffs. Apparently, the findings by the trial Court are based upon proper appreciation of evidence, therefore, the first appellate Court has also rightly upheld the said judgment and decree.

Resultantly, finding no merit in this appeal, much less involvement of any substantial question of law, the same is dismissed.

(MANOJ BAJAJ)
JUDGE

05.09.2022
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No