

[102] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2479-1988 (O&M)

Date of Decision : 12.10.2023

Ram Sarup

...Appellant

versus

Smt. Prem, LR of Smt. Bhagwanti
(Since Deceased) and another

....Respondents

Coram : **HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present : Mr. Deepak Kundu, Advocate for the appellant.
Mr. Keshav Pratap Singh, Advocate for respondents No.1&2.

ANIL KSHETARPAL, J. (ORAL)

CM-11727-C-2023

The prayer in the application is to permit the appellant to
withdraw CM-5262-C-2015 with liberty to file fresh one.

Learned counsel representing respondents No.1 & 2 has no
objection.

Dismissed as withdrawn.

There is no occasion to grant any liberty because the
appellant can always file application for bringing on record LRs.

RSA-2479-1988

[1] At the outset, it must be noticed that Ram Sarup, the sole
appellant has died.

[2] Shri Deepak Kundu, Advocate, has submitted that he is
representing the legal representatives of the appellant and is prepared to
address arguments.

[3] In the States of Punjab, Haryana and Chandigarh, there is an
amendment in Order XXII Rule 4 of the Code of Civil Procedure, which

permits the Court to decide the case, if no application for bringing on record the LRs is filed within the prescribed time and the suit against the party shall not abate. In this case, learned counsel representing the LRs has come forward to assist the Court on merits.

[4] The correctness of concurrent finding of fact arrived at by the Courts below is challenged by the plaintiff in the second appeal. His suit for grant of decree of declaration that he is owner in possession of the 10 marla plot has been dismissed. He filed a suit, claiming the property on the basis of his oral family settlement with Banwari Lal, his brother. In the alternative, he claims to have perfected his title by way of adverse possession. On the other hand, defendant No.1 (her husband Banwari Lal) purchased the property vide registered sale deed dated 12.10.1959, from Bhagat Ram. After the death of her husband, she sold the property in favour of Urmila (defendant No.2) vide registered sale deed dated 05.12.1980. The plaintiff also claimed that in fact, the sale consideration of the aforesaid sale deed was contributed by him.

[5] Both the Courts found that the plaintiff neither proved the family settlement nor proved that he has become owner by way of adverse possession. It was held that the plaintiff's possession is permissive because he is real brother of late Shri Banwari Lal.

[6] Learned counsel representing the appellant contends that defendant No.1, while appearing in evidence admits that the plaintiff is in possession of the property for the last 18-19 years and he has constructed the house. He submits that even if the family settlement is not proved, his

adverse possession for more than 12 years is proved, therefore, both the Courts had erred in dismissing the suit.

[7] On the other hand, learned counsel representing the respondents No.1 & 2 submits that Ram Sarup, while appearing in evidence admits that no family partition took place between the parties. Bhagat Ram, the vendor of Banwari Lal, has stated that the amount of sale consideration was paid by Banwari Lal and not by Ram Sarup.

[8] This Court has considered the submission of the learned counsel representing the parties.

[9] The concept of adverse possession is distinct from possession. Parties must prove that they entered forcible possession of the property with the owner’s knowledge. However, in this case, the plaintiff (appellant) claims that he entered into possession of the property on the basis of the family settlement. Obviously, the plaintiff’s possession was evidently permissible. In such circumstances, the plaintiff was required to prove when his possession turned hostile. No evidence in support thereof has been produced by the plaintiff.

[10] Merely having long permissive possession would not result in conferring title on the plaintiff by way of adverse possession.

[11] Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

[12] *Dismissed* accordingly.

(ANIL KSHETARPAL)
JUDGE

12.10.2023