

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

RSA-2445-1995 (O&M)

Date of decision : 08.02.2023

Dharam Pal and Others

... Appellant(s)

Versus

Ram Murti and Others

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ranjit Saini, Advocate for the appellants.

Mr. V.D. Sharma, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

The present appeal has been preferred by the defendant-appellants against the concurrent findings returned by both the Courts below.

The brief facts relevant to the present *lis* are that the plaintiff-respondents filed a suit for possession averring therein that they were owners of plot bearing Khasra No.176/1/11/2/2/2 min measuring 11 karam into 5 karam described in detail in the plaint. It was further averred that the plaintiff-respondents sold 12/62 share to Parkash etc., 1 kanal 9 marlas to Rameshwar out of the total land measuring 3 kanals 2 marlas comprising Khasra No.176/1/11/2/2/2. It was further averred that when *nishandehi* was conducted on 15.08.1988, it transpired that an area measuring 11 kanals 5 marlas had illegally been encroached by the defendant-appellants. The defendant-appellants filed their written statement raising preliminary

objections that the suit was bad for non-joinder and mis-joinder of necessary parties. On merits it was stated that the suit property was purchased by the defendant-appellants from the sons of Amar Singh and Ami Lal on 13.10.1988 for a consideration of Rs.1,90,000/- and Amar Singh and Ami Lal had got the suit property in exchange from Darya and that Darya had purchased the property from Deep Chand vide sale deed dated 28.01.1968 and Deep Chand had purchased the said property in March 1961 from Des Raj, who is the predecessor-in-interest of the plaintiff-respondents herein. Replication was filed. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiffs are owners of property in suit and are entitled to a decree for possession of the same on the grounds stated in the plaint ? OPD
2. Whether the suit is not maintainable in the present form ? OPD
3. Whether the plaintiffs have no cause of action to file the present suit? OPD
4. Whether the suit is time barred ? OPD
5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD
6. Relief.

The Trial Court held that all the sale deeds were unregistered documents and, therefore, the possession of the defendant-appellants was held not to be legal. The suit was, accordingly, decreed vide judgment and decree dated 02.11.1993. Aggrieved by the said judgment and decree, an

appeal was preferred which was dismissed by the lower Appellate Court. Hence, the present regular second appeal.

Learned counsel for the defendant-appellants would contend that in the present case a plea of adverse possession had also been raised by the defendant-appellants in the written statement and thereafter even in the grounds of appeal before the lower Appellate Court. However, both the Courts below have brushed aside the plea of adverse possession. Learned counsel for the defendant-appellants would further contend that the property was in possession of Deep Chand since 1961 and the possession was open and hostile and hence the defendant-appellants would be considered to be in adverse possession of the suit property.

Per contra, learned counsel for the plaintiff-respondents has contended that both the Courts below had decreed the suit of the plaintiff-respondents on the ground that the documents sought to be relied upon i.e. sale deeds were all unregistered documents. It is further the contention of learned counsel that the defendant-appellants came into possession only on 13.10.1988 and the suit was filed on 24.02.1989 and hence the question of adverse possession did not arise in the present case.

Heard.

In the present case, learned counsel for the defendant-appellants has limited his arguments and has only stressed upon the fact that the defendant-appellants had perfected their title by way of adverse possession. The argument raised by the counsel that the defendant-appellants would be considered to be in adverse possession since 1961 deserves to be rejected on the ground that neither is it the pleading nor is there any evidence on the

record which would show that the predecessor-in-interest, if they can be referred to as predecessor-in-interest of the defendant-appellants, were in adverse possession. The defendant-appellants came into possession only on 13.10.1988 and the suit was filed on 24.02.1989 and hence by no stretch of imagination it can be held that the defendant-appellants had perfected their title by way of adverse possession.

In view of the above, I do not find any illegality or infirmity in the findings returned by both the Courts below. No question of law, much less any substantial question of law, arises for determination in the present case. The present regular second appeal, which is wholly devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

08.02.2023

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO