

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

RSA No.4964 of 2017(O&M)

Date of Order:11.12.2023

Mohan Singh and another**.Appellants****Versus****Harminster Singh (since deceased) through LRs and another****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present: Mr. Deepak Sharma, Advocate
Mr. Pankaj Bali, Advocate
for the appellants.**

**Mr. Sunil Chadha, Sr. Advocate, with
Mr. Kashish Aggarwal, Advocate and
Ms. Sonia Monga, Advocate
for the respondents.**

ANIL KSHETARPAL, J

1. In this regular second appeal, the correctness of the concurrent findings of the fact arrived at by the courts below while decreeing the plaintiff's suit for possession is assailed by the defendant no.1 and 2.

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief are required to be noticed.

3. The plaintiff (late Sh. Harminster Singh son of Sh. Sucha Singh) claims that he along with Sh. Harinder Singh purchased the property from Sh. Mihya Dass vide registered sale deed dated 26.05.1972, which was registered on 06.06.1972. It is the case of the plaintiff that the defendant no.2 is in the possession of the property but he has stopped paying the rent for the rented premises. Previously the plaintiff filed the application under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973

(hereinafter referred to as 'the 1973' Act'), however, Sh. Joga Singh, defendant no.2, being the tenant has denied the landlord-tenant relationship.

4. The rent petition was dismissed on the ground that the plaintiff has failed to prove the relationship of landlord and the tenant between the parties. The appeal against the aforesaid judgment also got dismissed. Thus, the plaintiff filed the present suit for possession.

5. Defendant nos.1 and 2, filed a written statement claiming that they rented the shop from defendant no.3 (Trust) in the year 1965 and the shop is owned by the Trust by adverse possession.

6. Both the courts have found that the defendants have failed to place on record any document to prove that the Trust has become the owner of the property by adverse possession. Thus, the suit filed by the plaintiff has been decreed.

7. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record.

8. The learned counsel representing the appellants contends that the plaintiff filed the suit for recovery of possession of immovable property beyond the time prescribed under Article 65 of the Limitation Act. He submits that the Trust has been in the adverse possession of the property for the last more than 12 years before the filing of the suit and possession being nine points in law, their possession has ripened into ownership. He further submits that the judgment Ex.D27 has not been considered by the courts below. He further contends that the property which was purchased by the plaintiff is different from the suit property as the plot numbers of both the properties are distinct, property purchased by the plaintiff is property

no.7149, whereas the suit property number is 7149/4. He also relies upon the judgment passed by the Supreme Court in **Kesar Bai vs. Genda Lal and another, (2022) 10 SCC 217** , to contend that once the plaintiff has failed to prove the ownership of the suit property on basis of the registered sale deed, his suit for possession is not maintainable.

9. On the other hand, the learned senior counsel representing the respondent (plaintiff) contends that the appellant or the Trust has failed to prove the fact as to when their possession became adverse to the plaintiff. He further contends that the judgment Ex.D27 has been discussed by the First Appellate Court in paragraph 15 of the judgment. While referring to the deposition of DW1-Mohan Singh, appellant no.1, it has been contended that the defendant admitted that the property purchased by the plaintiff is the suit property.

10. This court has considered the submissions of the learned counsel representing the parties.

11. Article 65 of the schedule attached to the Limitation Act provides that the period of limitation will begin to run from the time when the possession of the defendant becomes adverse to the plaintiff. In this case, the defendants have failed to prove the date, time, month or year in which their possession became adverse to the plaintiff. In fact, both the courts have found that the defendants have failed to place on record any document to prove that the suit property is owned by the Trust. It may be noted here that though the Trust is party to the suit, but the Trust has never chosen to contest the suit on its own. Moreover, it is evident that the judgment Ex.D27 is with respect to the land measuring 291 kanals and 12 marlas and the defendants have failed to lead any evidence to connect the

shop in question with the aforesaid suit land.

12. On a careful reading of the deposition of Sh. Mohan Singh (DW1), it is evident that the suit property is the same property which was purchased by the plaintiff vide registered sale deed dated 26.05.1972 from Sh. Mihya Dass.

13. The last submission of the learned counsel representing the appellants has no substance because the judgment passed in **Kesar Bai's case (supra)** is based on the fact that the courts had found that the plaintiffs have failed to prove their ownership on the basis of registered sale deed dated 31.08.1967. In that case, the plaintiffs claimed the plea of adverse possession. The Court held that such plea of adverse possession is contrary to the plea of ownership. In that context, the Supreme Court allowed the appeal. In this case, both the courts have held that the plaintiff has proved his ownership by producing the registered sale deed and the defendants have failed to prove any right, title or interest in the suit property.

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

15. Dismissed.

16. All the pending miscellaneous applications, if any, are also disposed of.

December 11, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO