

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

**RSA No.3561 of 2023 (O&M)
Date of Decision: 28.11.2023**

Munshi & Others

...Appellants

Versus

Vijay Singh @ Bijender Singh (since deceased)
through his LRs & Anr.

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. R.A, Sheoran, Advocate,
for the appellants.

Mr. Parveen Kumar, Advocate,
for the LRs of respondent No.1-Caveators.

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MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment and decree passed by learned Civil Judge (Junior Division), Bhiwani (for short 'the trial Court') on 07.12.2016, whereby the Civil Suit filed by respondent No.1-caveator/plaintiff (since deceased and represented through his LRs, who shall here-in-after be referred as 'the LRs of the plaintiff') against the appellants-defendants No.1 to 3 and proforma-respondent No.2-defendant No.4 (here-in-after to be referred as 'the defendants') for seeking a decree for possession of specific portions of the suit property, with the further prayer for grant of the relief of permanent injunction for restraining the defendants from interfering in his (plaintiff's) possession over the remaining portion of the afore-said property and also from obstructing the construction work as being carried out by him therein, had been decreed as well as by the judgment and decree handed down by learned

Additional District Judge, Bhiwani (for short 'the Lower Appellate Court') on 20.10.2023, dismissing the appeal moved by the defendants to assail the judgment and decree dated 07.12.2016, they (defendants) have preferred the instant Regular Second Appeal to lay challenge to the same.

2. I have heard learned counsel for the appellants-defendants as well as learned counsel for the LR of respondent No.1-plaintiff in the present appeal, at the preliminary stage and have also perused the file carefully.

3. Learned counsel for the appellants-defendants contends that the defendants are in possession over certain portions of the suit property by virtue of an oral family settlement that had taken place long ago and he also raises an alternative contention to the effect that for the last more than 12 years, the possession of the defendants over the above-said portions of the suit property, has been adverse and hostile to the rights of the plaintiff therein and it has ripened into their (defendants') ownership over those portions but the trial Court and the Lower Appellate Court did not appreciate the afore-discussed aspects of the dispute between the parties in the correct perspective and hence, the impugned judgments and decrees are not legally sustainable.

4. Per-contra, learned counsel for the LR of respondent No.1-plaintiff argues that the plaintiff had been adopted by his grand-mother Sarja Devi and had received the entire suit property from his above-named adoptive mother and was, therefore, its exclusive owner and it being so, there could not be any occasion to subject this property to any family settlement and rather, the plaintiff had permitted the defendants to reside in the portions thereof and thus, their possession over the same being a permissive one, they (defendants) cannot claim ownership in respect thereof, by way of adverse possession.

5. Undisputedly, appellant No.1 and proforma-respondent No.2 are the brothers and appellants No.2 and 3 are the nephews of the plaintiff. Both the Courts below have concurrently observed that the entire suit property had been transferred to the plaintiff by his afore-named adoptive mother and that the defendants could not prove on the record that they had got the possession of specific portions of the suit property in pursuance of oral family settlement, as claimed by them.

6. So far as the plea of the defendants qua their ownership over the suit property on the basis of adverse possession is concerned, it is well settled that it is entirely for the party taking such plea, to adduce sufficient and cogent evidence to show as to how, when and under what circumstances he/she came in adverse possession over the disputed property but in the instant appeal, both the Courts below have specifically held that the defendants had not been able to prove the fulfilment of the above-discussed pre-requisites by them.

7. As a sequel to the fore-going discussion, it follows that the impugned judgments and decrees, as passed by both the Courts below, do not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the same are, hereby, upheld and the appeal in hand, being *sans* any merit, stands dismissed.

28.11.2023
seema

(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>