

RSA-802-1992 (O&M)

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2024:PHHC:049794

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

RSA-802-1992 (O&M)

Date of decision: 10.04.2024

Hukam Singh

....Appellant

Versus

Hukam Chand and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rajinder Goel, Advocate for the appellant

Mr. Rakesh Nagpal, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

1. This is Regular Second Appeal filed by defendant no.1 in a plaintiff's suit for the grant of decree for declaration with a consequential relief of possession. In substance, the appellant prays for setting aside the judgment and decree passed by the First Appellate Court.

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

3. The plaintiff being the auction purchaser, pursuant to a court auction, claims decree of declaration with a consequential relief of possession. Their case is based upon their title. Defendant no.1 claims that he is in settled possession for the last 30 years and therefore, he is openly in possession to the knowledge of the plaintiff.

4. Though the plaintiff failed to lead appropriate evidence before the trial court resulting in dismissal of the suit, however, before the First Appellate Court, the plaintiff led evidence documents Ex.P-1 to

P-8 including auction proceedings, court order as well as the sale certificate. The First Appellate Court, thus, accepted the appeal resulting in decree in favour of the plaintiff.

5. The correctness of the judgment passed by the First Appellate Court is challenged in this Regular Second Appeal. The learned counsel representing the appellant submits that the possession of the appellants is proved for the last 30 years and the plaintiffs have failed to prove as to when they were delivered possession and subsequently dispossessed.

6. This Court has considered the submissions made by the learned counsel representing the parties.

7. The plaintiffs are owners by virtue of sale certificate issued by the court. He is an auction purchaser. His suit is based on his title, which is governed by Article 65 of the Limitation Act, 1963. Unless the defendant proves that he is in adverse possession for more than 12 years, before filing of the suit, the suit is within limitation. The limitation for filing a suit for possession, based on title, begins to run from the date the other party claims adverse possession. In this case, the defendant has claimed that he is in open and continuous possession. However, he has failed to prove as to when his possession became adverse. Moreover, during all this while, the litigation was pending.

8. Keeping in view the aforesaid facts, no ground to interfere is made out.

9. Hence, dismissed.

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

10.04.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE