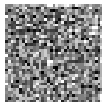


IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

142

2024.PHHC:081479



RSA-1450-2024 (O&M)  
Date of decision: 02.07.2024

RAJESH ..Appellant

Versus

RAJENDER SINGH AND OTHERS ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Geeta Singhwal, Advocate  
for the appellant.

ANIL KSHETARPAL, J(Oral)

1. In this regular second appeal, defendant No.3 assails the correctness of the concurrent findings of fact arrived at by the Courts below while decreeing plaintiff's suit for possession of 6 kanal and 15 marlas of land. The plaintiff claiming to be owner of the property along with proforma defendants filed the suit for possession. The defendants while contesting the case claimed that they have perfected their title by way of adverse possession and the previous suit filed by proforma defendants was dismissed. Both the Courts upon appreciation of evidence have found that the plaintiff was proforma defendant in the previous suit and no relief was sought against him. It is also found that the defendants failed to prove that they have perfected their title by way of adverse possession.
2. The learned counsel representing the appellant submits that the judgment in the previous suit will operate as *res judicata*. She further submits that the appellant is in possession for the last 22 years.
3. This Court has considered the submissions of the learned counsel representing the appellant.

4. It is evident that the previous suit was dismissed under Order XVII Rule 3 of the Code of Civil Procedure, 1908, because the proforma defendants who were the plaintiffs in the previous suit did not produce evidence. Moreover, the plaintiff was proforma defendant and he was out of the Country. Hence, the judgment would not operate as *res judicata* against him.

5. The appellant has failed to prove as to when his possession became adverse. He is owner of the adjoining land. Both the Courts have found that he has encroached upon the plaintiff's share.

6. In view of the aforesaid fact, no ground to interfere is made out.

7. Dismissed accordingly.

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

July 02<sup>nd</sup>, 2024  
Ay

(ANIL KSHETARPAL)  
JUDGE

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