

RSA-5801-2019(O&M)

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2024:PHHC:013541

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5801-2019(O&M)

Date of decision :31.01.2024

Gurlal Singh

...Appellant

Vs.

Harbhajan Singh(Since Deceased)
Through his LRs and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.P.S. Sandhu, Advocate
for the appellant.

Mr. Prabhjoyot Singh Chahal, Advocate and
Mr. G.S. Nagra, Advocate
for respondent No.1.

ANIL KSHETARPAL, J.

1. In this second appeal, the correctness of concurrent findings of the fact arrived at by the Courts below is assailed by the plaintiff. He filed a suit for grant of decree of declaration that he is the owner in possession of the property by way of natural succession or inheritance by virtue of Will executed by his father Kuldeep Singh. In the alternative, he claimed title by prescription of time i.e. adverse possession. The defendants while contesting the suit also filed counter claim for possession. They claimed that Kuldeep Singh, the plaintiff's father, was never in adverse possession and rather his possession was as a licensee.

2. Both the Courts dismissed the plaintiff's suit as it was found that in the revenue record, the plaintiff or his father Kuldeep Singh was recorded as *Gair Marusi*. However, there was no entry in the column of rent in the

jamabandi. Hence, he was not proved to be in possession of the property as tenant. On the basis of evidence, the Court found that the possession of the plaintiff is as a licensee. Thus, the counter claim filed by the defendants was decreed.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

4. Learned counsel representing the appellant contends that the possession of the plaintiff became adverse at least in the year 2003, when the High Court decided previous litigation. He submits that the counter claim was filed on 16.07.2016 and therefore, the plaintiff has become owner by way of adverse possession.

5. On a Court question, learned counsel representing the appellant admits that in the previous litigation filed by the appellant, he never claimed title by way of adverse possession. In the previous suit, he challenged a sale deed, which was dismissed and was reversed in the First Appellate Court, however, there was no finding with regard to the appellant's adverse possession.

6. For proving title by way of adverse possession, the plaintiff is required to prove that he entered into possession forcibly. However, as already noticed in the revenue record the entry is *Gair Marusi*. The Courts have drawn conclusion that in absence of corresponding entry in the rent column, the plaintiff is in permissive possession. Still further, appellant is not entitled to take benefit of the period when the previous litigation remained pending. He has failed to prove as to when his possession became open hostile and adverse to the owners.

7. In view of the aforesaid facts, no ground for interference is made out.
8. Hence, dismissed accordingly.

31.01.2024

(ANIL KSHETARPAL)

JUDGE

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	Whether Reportable :	Yes	No