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

**RSA-2545-1993 (O&M)
Reserved on: 13.01.2025
Pronounced on: 24.01.2025**

Balbir Singh (Deceased) through LRs

...Appellant

Vs.

Ran Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shailendra Jain, Sr. Advocate with
Mr. Munish Kumar, Advocate
for the appellant.

Mr. Madan Pal, Advocate
Mr. Sanjiv Sheoran, Advocate
for respondent No.1.

Mr. Binayjeet Sheoran, Advocate
Mr. Malwinder Singh Virk, Advocate
for respondents No. 2, 3, 5 and 6.

ANIL KSHETARPAL, J.

1. **Facts of the case:-**

1.1 This is defendant's regular second appeal to assail the correctness of the First Appellate Court's judgment which in turn has reversed the judgment of the trial Court.

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

1.3 The plaintiff (Sh. Udai Singh) s/o Smt. Chhoto d/o Sh. Ami Lal filed a suit for possession of a house located in Village Dighal, Tehsil Jhajjar,



District Rohtak while alleging that defendant No.1 has taken forcible possession of the property when plaintiff and defendants No. 1 to 4 were absent from the village. The defendant is the owner in possession of the property. The defendant contested the suit claiming that Smt. Chhoto died in the year 1976 when she was residing in Village Mangaspur, which is part of Union Territory of Delhi. In the alternative, he claimed that he has perfected his ownership of the house in dispute by way of an adverse possession because his possession is continuous, hostile, notorious for more than 12 years.

1.4 The trial Court dismissed the suit, which was reversed by the First Appellate Court.

1.5 In this case, Ex. P2 is a judgment passed in RSA No. 282 of 1975 ('**Balbir Singh vs. Smt. Chhoto**'). Smt. Chhoto filed a suit for possession of agricultural land measuring 06 bigas 06 biswas situated at Village Dighal, Tehsil Jhajjar, District Rohtak against the appellant (Sh. Balbir Singh), who defended the suit on the ground that he was collateral beyond fifth degree of Sh. Ami Lal, who was the father of Smt. Chhoto. It was claimed by defendant therein and appellant herein that as per *Riwaj-i-am* of Rohtak District, daughter is not entitled to inherit the property. The aforesaid suit was although dismissed by the trial Court, however, in first appeal the suit was decreed. The appellant's regular second appeal was dismissed on 25.03.1983.

1.6 It would be noted here that Sh. Ami Lal did not have son. He left behind Smt. Chhoto, the only daughter, who was married in Village Mangaspur.



1.7 The plaintiff claimed that defendant has entered forcible possession of the property two months before the filing of the suit.

1.8 The plaintiff examined PW/1-Sh. Khushi Ram, PW/2- Sh. Hardwari, PW3-Udai Singh (plaintiff) and produced documents in the shape of site plan Ex.P1 and judgment Ex.P2. On the other hand, defendant No. 1 examined DW/1-Sh. Mangat Ram, DW/2-Sh. Umed Singh, DW/3-Karan Singh, DW4-Balbir Singh (defendant) and produced the site plan.

2. **Arguments put forth:-**

2.1 Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book alongwith the requisitioned lower Court Record.

2.2 Leaned senior counsel representing the appellants contends that the plaintiff failed to establish his ownership of the suit property by producing any documentary evidence while drawing attention of the Court to inconsistencies in the testimonies of the plaintiffs' witnesses with regard to death and dispossession. He submits that the plaintiff has failed to prove his case. He further submits that the plaintiff has also failed to produce voter card, ration card, house tax receipts to prove that he was ever in possession of the property. Judgment Ex. P2, relates to agricultural land and not the house in question. He further submits that plaintiff has failed to produce evidence to prove his possession within a period of 15 years preceding the suit. The plaintiff has defended the judgment.



3. Discussion:-

3.1 The First Appellate Court has held that Sh. Ami Lal is proved to be owner of the agricultural land and hence *biswedat* of the village. The *abadi* (residential area) of village is used either by the proprietors/*biswedats* for constructing their residential houses or by the persons who are doing menial jobs in order to help the proprietors. The defendant No. 1 has not led any evidence to prove that he was *biswedat* of the village. Moreover, with regard to agricultural land, defendant No. 1 claimed the property on the ground that he is related to Sh. Ami Lal, father of Smt. Chhoto. Defendant No. 1 failed to substantiate his right. Thus, the First Appellate Court on the basis of oral evidence has concluded that it is the plaintiff who is entitled to the property.

3.2 With reference to the first submission, it would be noticed that oral evidence of PW/1-Khushi Ram, PW/2- Hardwari and PW/3-the plaintiff, is sufficient to prove his ownership. Even, if the plaintiff has failed to prove that he was permanently residing in the village, still that itself is not sufficient to dismiss his suit for possession. Even, if the plaintiff was residing in village Mangaspur, still he being the son of Smt. Chhoto has inherited the property from Smt. Chhoto. Thus, plaintiff has filed a suit for possession as the owner. The defendant has failed to lead any evidence to prove his ownership. He has claimed perfection of his title by way of adverse possession in the alternative. Thus, heavy onus lay upon the defendant to prove either his title or his adverse possession but he failed to prove the same. Smt. Chhoto died in the year 1976. The suit was filed in October 1987. Even, if it is assumed that he entered possession of the house after the death of Smt. Chhoto, still 12 years did not



elapse. Moreover, in the previous suit defendant claimed ownership on the basis of inheritance being collateral of Sh. Ami Lal.

4. **Decision:-**

4.1 Moreover, a finding of fact has been arrived at by the First Appellate Court. In absence of any documentary evidence to prove that the defendant was having any right, title or interest in the house in question, this Court does not find it appropriate to interfere. Hence the appeal is dismissed.

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

(ANIL KSHETARPAL)
JUDGE

24.01.2025

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No