

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

RSA-2826-1993

Date of decision: 14.01.2025

SAVITRI DEVI (DECEASED) THROUGH LRS.

..Appellant

Versus

HARI NANDAN (DECEASED) THROUGH LRS. & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Aashna Gill, Advocate
for the appellant.

Mr. S.M. Sharma, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. This regular second appeal has been filed by widow of defendant No.1 against the judgment passed by the First Appellate Court, which in turn has reversed the judgment and decree passed by the trial Court.

2. The plaintiffs filed suit for possession as owners. They claim that defendant No.1 has entered into forcible possession of the suit property i.e. 1 kanal and 17 marlas. The defendant contested the suit on the ground that the suit is barred under Order 11 of the Code of Civil Procedure, 1908 and Smt. Naraini was the original owner and persons entered in column No.4 of the jamabandi have wrongly been entered as her legal representatives. In the alternative, defendant No.1 claims ownership by way of adverse possession.

3. On appreciation of pleadings, the following issues were culled out by the trial Court:-

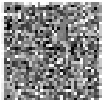


*“1. Whether the plaintiff and defendants No.2 to 8 are owner of the land in dispute? OPP
2. Whether defendant no.1 entered into possession of the land in dispute due to his relationship with defendant No.2 and, as such, he is not entitled to set up a title to the suit property? OPP
3. Whether the defendant No.1 has become the owner of the land in dispute by adverse possession. OPP
4. Whether the suit is barred by limitation? OPP
5. whether the suit is not maintainable in the present form? OPD
6. whether the suit is barred u/S 11 CPC? OPD
7. Whether the suit is liable to be stayed? OPD
8. Whether the suit is mis-joinder and non-joinder or parties? OPD
9. Whether the plaintiffs are estopped by their act and conduct and silence, latches etc. from the filing the suit? OPD
10 Relief.”*

4. The trial Court while dismissing the suit by a detailed judgment decided issue No.1 against the plaintiffs while observing that they have failed to prove their ownership. The Court also held that defendant No.1 has proved perfection of his title by way of adverse possession. In first appeal, the trial Court’s finding to the effect that defendant No.1 has become owner by way of adverse possession has been reversed and the suit filed by the plaintiffs has been decreed. Learned counsel for the appellant submits that the First Appellate Court has overlooked the findings of fact arrived at by the trial Court under issue No.1. She submits that the First Appellate Court has not recorded any finding to the effect that the plaintiffs are proved to be owner of the property.

5. Per contra, learned counsel for the respondent failed to draw the attention of the Court to any finding of the First Appellate Court to the effect that plaintiffs are owner of the property.

6. It appears that the First Appellate Court has overlooked issue No.1 while deciding the appeal. In fact, issue No.1 is the core issue, which is



required to be decided at the first instance before proceeding with the case. In absence of entitlement, the maintainability of plaintiff's suit would become debatable. Hence, this Court is left with no choice but to remit the matter back to the First Appellate Court to decide the appeal afresh after recording finding upon issue No.1.

7. Since, the suit was filed on 15.02.1988, the First Appellate Court is requested to make sincere endeavour for expeditious disposal of the appeal.

8. The parties through their counsel are directed to appear before the First Appellate Court on 14.02.2025.

January 14th, 2025

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(ANIL KSHETARPAL)
JUDGE

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