

(2002) 09 P&H CK 0071

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2986 of 2002

Amrit Lal

APPELLANT

Vs

Manhar Lal

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Citation : (2003) 1 ICC 897 : (2003) 2 LJR 143 : (2002) 4 RCR(Civil) 793

Hon'ble Judges : V.M.Jain, J

Advocate : Mr. O.P. Hoshiarpuri, Advocate.Mr. G.S. Nagra, Advocate., Advocates for appearing Parties

Judgement

V.M. Jain, J.—Records received and perused.

2. At the time when the appeal came up for motion hearing, it was argued before me by the learned counsel for the defendantappellant that the suit of the plaintiff was dismissed by the learned trial Court and that during the pendency of the appeal, the learned Additional District Judge had allowed the plaintiff to produce additional evidence. It was further submitted that the defendantappellant was not given any opportunity whatsoever to rebut the evidence produced by the plaintiff. Accordingly, notice of motion was ordered to be issued and the records were also ordered to be summoned.

3. A perusal of the records of the lower Appellate Court would show that after hearing the arguments in the main appeal as also in the application for additional evidence, the learned Additional District Judge, vide order dated 18.3.2002, allowed the application of the plaintiff under Order 41 Rule 27 CPC and allowed the plaintiff to produce the additional evidence. It would also be clear that on the same day i.e. 18.3.2002, counsel for the plaintiff had tendered in evidence two documents and had closed the additional evidence. From the order dated 18.3.2002, it would also be clear that thereupon the case was adjourned to 25.3.2002, for the rebuttal evidence of the defendant. On 25.3.2002, no rebuttal evidence to the additional evidence was present and the case was adjourned to 2.4.2002. On 2.4.2002, the defendant examined one witness, in rebuttal to the

additional evidence and sought adjournment for further evidence and the case was adjourned to 15.4.2002, on which date, Amrit Lal defendant closed the evidence in rebuttal to the additional evidence.

4. Thereafter, the case was fixed for the arguments. From the persual of the above, it would be clear that the assertion made before me in this appeal that the defendantappellant was not given any opportunity to produce evidence in rebuttal to the additional evidence was factually incorrect. In fact, as referred to above, the defendantappellant was not only given the opportunity to produce evidence in rebuttal to the additional evidence, but he had examined on witness namely PW 4 Labh Singh by way of rebuttal to the additional evidence and thereafter Amrit Lal defendant himself had closed the rebuttal evidence to the additional evidence.

5. In this regular second appeal filed by Amrit Lal defendant, against the judgment and decree passed by the learned Additional District Judge, vide which the appeal was accepted and the suit of the plaintiff was decreed, it has been submitted before me by the learned counsel for the defendant appellant that in fact no case was made out for decreeing the suit of the plaintiff. It has further been submitted that the plaintiff was not the owner of the suit property. However, I find no force in this submission of the learned counsel for the defendantappellant.

6. The learned Additional District Judge had discussed the entire evidence led by the parties and had found that the plaintiff was the owner of the property in dispute and had accordingly, decreed the suit of the plaintiff for possession. It was also noticed by the learned Additional District Judge that the defendant had taken the plea that he had become the owner of the suit property by adverse possession, inasmuch as he was in adverse possession of the suit property for the last more than 30 years. Learned Additional District Judge also found that Amrit Lal defendant, however, had failed to prove that he had become the owner of the suit property by adverse possession, inasmuch as DW 2 Amrit Lal had failed to State anything in this regard. He had nowhere stated that he was treating himself to be the owner of the suit property adversely to the title of the plaintiff. In my opinion, the above findings of the learned Additional District Judge are based on the evidence and call for no interference by this Court in the regular second appeal. Even otherwise, no substantial question of law is involved in this appeal.

Accordingly, the appeal is dismissed.