

(2016) 05 P&H CK 0084

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 923 of 2016 (O&M).

Gurbachan Singh and Others

APPELLANT

Vs

Manjit Kaur and Others

RESPONDENT

Date of Decision : 04-05-2016

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13

Citation : (2016) 3 RCRCivil 666

Hon'ble Judges : Jitendra Chauhan, J.

Bench : Single Bench

Advocate : Sanjiv Gupta, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Jitendra Chauhan, J. - In this regular second appeal, the appellant-defendants have challenged the judgment and decree dated 24.01.2014 of Additional District Judge, Ambala dismissing the appeal filed by the appellants against the judgment and decree dated 12.10.2011 of the Additional Civil Judge (Sr. Divn.), Naraingarh, decreeing the suit of the plaintiffs.

2. Learned counsel for the appellant-defendants contended that the jurisdiction of the civil court is barred under Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961; that both the courts below have failed to appreciate that the defendants-appellants are in adverse possession of the land; and that the demarcation report, Ex.P6 is inadmissible in evidence as the demarcation was not conducted according to the Financial Commissioner's instructions in the Punjab and Haryana High Court Rules and Orders. At the end, he contended that both the Courts below have misread, misinterpreted the oral and documentary evidence and pleadings of the parties, so, his prayer is for acceptance of the appeal.

3. I have heard the learned counsel for the appellant-defendants and have carefully gone through the judgments of both the Courts with their able

assistance.

4. Admittedly, the plaintiff-Manjit Kaur is the owner in possession of land bearing Khasra No.21//24 and 21//17/2 and 23 on the basis of sale deed dated 13.05.2003. Plaintiff No.1 got the land demarcated vide demarcation report, Ex.P6 from the revenue officials and it was found that the defendants have encroached upon some part of land. The appellants did not file any objection to the demarcation report. It is a matter of common knowledge that when demarcation is carried out in a village, the fact is known to all and sundry and the villagers take all interest in the demarcation proceedings. As per record, the appellants did not opt for second demarcation from higher officers of the revenue officers, if they were not satisfied with the demarcation report, Ex.P6. Even the objections have not been filed to demarcation report, Ex.P6. So, the demarcation report, Ex.P6 is admissible in evidence and both the Courts below have rightly relied upon it. Learned counsel has failed to point out any infirmity in the demarcation report, Ex.P6.

5. Now coming to question of adverse possession, the defendants have failed to prove the ingredients of "adverse possession". There is no specific pleading in the written statement of the defendants as to on what date they came to be in possession of the land; in what capacity he entered into possession; whether the possession was in the knowledge of the owner; whether it was open, hostile and undisturbed and since when he was in uninterrupted continuous possession. There is nothing on record. The onus was upon the defendants to plead and prove the above on strong evidence. So, this contention is outrightly rejected.

6. The next contention is that the jurisdiction of civil court is barred. It is a lis between private persons over private property. The learned counsel has failed to point out as to how the Punjab Village Common Lands (Regulation) Act is applicable. Section 13 of the Act is applicable only to determine whether the land is shamlat deh or not. There is no such plea either in the pleadings or taken in the Courts below. This contention is also repelled.

7. The last contention of the appellants is that they are not asserting any right over the purchased portion, but are agitating with respect to the land over which there exist dung hills (Kurries), Manure pits, goharas etc. This contention is also taken in para No.4 of the grounds of appeal. In Tek Chand and another v. Ramesh Kumar, decided on 29.09.2008 in RSA No.990 of 2008, this Court has held that the mere acts of user such as throwing rubbish, placing cow dung cakes, tethering cattle, installation of pegs will not establish adverse possession. So, it is held that plea of adverse possession is not available to the appellants.

8. There is no misreading or misinterpreting of evidence. There is no infirmity in the concurrent findings of facts arrived at by both the Courts below. No substantial question of law is involved in this case. The judgments and decrees of both the Courts below are hereby affirmed.

CM Nos. 2529-30 of 2016

Heard.

9. Keeping in view the circumstances explained in the application, this Court finds no sufficient ground to condone the delay of 546 days in filing the appeal. Moreover the RSA is being dismissed in limine.

CM No.2530 of 2016 is declined.

10. No other point has been argued by the learned counsel for the appellant-defendants.

11. For the foregoing discussion, regular second appeal No.923 of 2016, is dismissed on merit as well as being time barred as there are no good grounds for condoning the delay in filing the appeal.