

Smt. Chander Devi Vs Viney Pal Singh and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 23, 1998

Citation: (1998) 119 PLR 855 : (1998) 3 RCR(Civil) 669

Hon'ble Judges: Swatanter Kumar, J

Bench: Single Bench

Advocate: C.B. Goel, for the Appellant;

Final Decision: Dismissed

Judgement

Swatanter Kumar, J.

This Regular Second Appeal is directed against the judgment and decree passed by the learned Additional District

Judge, Gurgaon dated 27.2.1998. The basic grievance of the appellant is that the learned courts below have erred in not appreciating the evidence

in proper perspective and therefore, have fallen in error of jurisdiction in dismissing the appeal. Smt. Chander Devi had instituted the suit against the

defendants-respondents Vinay Pal Singh and others claiming declaration that she has become owner by way of adverse possession of the suit

property and for permanent injunction in regard to the plot of land measuring 467 Square yards, situated at Shivji Park, Gurgaon. The defendants

contested the suit in their own rights though defendants No. 3 to 7 were proceeded against exparte. Defendant No. 2 contested the claim that he

was owner of plot comprised in Khasra No. 16/16 and he had purchased this plot from Sohan Lal and Hari Kishan vide registered sale-deed

dated 16.4.1974 and as such, the plaintiff has no right over the property. In addition to this, some preliminary objections were also raised.

2. Learned trial Court framed as many as seven issues and the Court granted the following limited relief to the plaintiff:-

That from above given discussion under various issues plaintiffs succeeded in proving that she is owner of land measuring 200 yards and is in

possession of whole of the suit land. But she failed to prove that her possession over defendant 2's land is adverse and she has acquired

ownership rights thereof by way of adverse possession. Therefore, the suit of the plaintiff is decreed partly only in respect of her own land only.

The defendant No. 2 is at liberty to dispossess her through legal means only.

Decree sheet be prepared. No order as to costs. File be consigned to record room.

3. As is clear from the aforestated relief, issue No. 2 with regard to adverse possession over the area in excess of 200 yards was decided against

the appellant-plaintiff. On appreciation of the evidence and Ex.DW2/1 which was registered sale-deed and examination of the attesting witness, the

learned trial Court disbelieved the version put forward by the plaintiff. Appeal against the judgment and decree dated 2.12.1993 was dismissed by

the learned 1st Appellate Court vide detailed judgment and upon correctly appreciating the evidence placed on record. Learned trial Court had

correctly noticed in its judgment that the defendants had not challenged the findings of the trial Court in favour of the plaintiff limited to the relief of

200 yards. It further noticed that P.W.4 plaintiff herself never stated in her examination that her possession was adverse and hostile to the

knowledge of true owner. There was in fact not even an iota of evidence to prove issue No. 2. The burden of proving issue No. 2 was heavily

placed upon the plaintiff. During the course of arguments the learned counsel for the appellant has not been able to convince this Court that the

finding of the learned courts below is in any way suffering from error of jurisdiction or that the approach is palpably wrong.

4. There is concurrent findings of facts arrived at by the learned courts below and I see no reason to interfere with such findings in this regular

second appeal. I find no merit in this appeal and the same is dismissed in limine. There will be no order as to costs.