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(1998) 04 P&H CK 0014

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 785 of 1998 (O and M)

Smt. Chander Devi	APPELLANT
Vs	
Viney Pal Singh and Another	RESPONDENT

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 pulpably 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.