
(1998) 11 P&H CK 0136

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2708 of 1998

Ranjan and Others

APPELLANT

Vs

Kishori Lal and Others

RESPONDENT

Date of Decision: Nov. 19, 1998

Citation: (1999) 121 PLR 377 : (1999) 2 RCR(Civil) 563

Hon'ble Judges: Swatanter Kumar, J

Bench: Single Bench

Advocate: L.K. Sinhal, for the Appellant;

Final Decision: Dismissed

Judgement

Swatanter Kumar, J.

The appeal preferred by the appellants against the judgment and decree dated 13.9.1996 of the learned Trial Court which was dismissed by the learned Additional District Judge, Faridabad, vide judgment dated 13.2.1998, giving rise to the present regular second appeal. The plaintiff Kishan Lal and another had filed a suit for mandatory injunction that they are co-owners of the property in dispute and the defendants have no interest in the said property. It was further averred that nearly six months back the defendants had forcibly occupied the property in dispute and has raised some kacha and pucca construction thereupon. They claimed the possession alongwith other co-owners and also a direction for demolition. According to the plaintiffs, they had purchased the said property vide registered sale deed dated 7.3.1956. The suit was contested by the defendants alleging that they have become the owners in possession by way of adverse possession and they are in possession since 15.3.1964. Their possession over the property in dispute is open, continuous, hostile and uninterrupted and as such the suit ought to have been dismissed. The learned trial court had dismissed the suit. The learned appellate court concurring with the findings of facts and conclusion arrived at by the learned trial court dismissed the appeal filed by the appellants vide judgment dated 13.2.1998. It will be appropriate to refer to the finding arrived at by the learned first

appellate court on the material issue as under:-

"At the same time, I do not agree with the learned counsel for the appellants that the respondents had occupied the suit land only some six months before the institution of the suit. This is because the solitary statement of Har Lal-appellant in this regard as PW-1 does not inspire much confidence as against the voluminous evidence led by the respondents to the contrary. On behalf of the respondents, Partap Singh has appeared in the witness box as DW-1 and has stated that the respondents were in possession of the suit land right from 15.3.1964. He is given support in this regard by Prem Raj DW-4, Sohan Lal DW-5, Giasi Ram DW-6, Ranbir Singh DW-7 and Rattan Lai DW-8. All these witnesses have stated almost in a chorus that the respondents were in possession of the disputed property for the last about 32-33 years and that they had constructed a boundary wall and some rooms thereon. No exception can, therefore, be taken to the conclusion arrived at by the trial court that the respondents were perhaps in possession of the suit land since 1966-767 even though their possession was not proved to be in adverse capacity and the same had thus not ripened into ownership. The trial court further rightly observed that the respondents were paying house tax also as stated by Bijender Singh DW-2, Gram Sachiv. This witness has stated that Siriya respondent was paying house tax from 1966-67."

2. In the facts and circumstances of the case certainly even if the version of the appellants was believed, they ought to have asked for the relief of possession, which certainly was neither asked nor amended subsequently. The conduct of the appellants seen in the light of the evidence led on record that the defendants were in possession of the suit property for a considerable period., the whole suit of the appellants was liable to be dismissed and it has so been rightly dismissed by the learned courts below.

3. I find not merit in this regular second appeal. Consequently, the same is dismissed in limine. However, there shall be no order as to costs.