

Teja Singh Vs. Gurdev Singh

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Court : Punjab and Haryana

Decided On : Aug-05-2005

Reported in : (2006)142PLR60

Judge : Viney Mittal, J.

Acts : Limitation Act - Schedule - Article 65

Appeal No. : Regular Second Appeal No. 206 of 1986

Appellant : Teja Singh

Respondent : Gurdev Singh

Advocate for Def. : Arihant Jain and; Arun Jindal, Advs.

Advocate for Pet/Ap. : R.S. Rai, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

Viney Mittal, J.

1. The defendant Teja Singh has approached this Court through the present Regular Second Appeal.

2. A suit for possession of land measuring three bighas and three biswas alongwith a suit for recovery of Rs. 1299.17p as mesne profits, was filed by plaintiff Gurdev Singh. It was claimed by the plaintiff that he was the owner of the suit land and that the defendant had taken forcible possession of the suit land. Accordingly, he claimed the possession as well as mesne profit.

3. The suit was contested by defendant Teja Singh. In the written statement, he denied the ownership of the plaintiff. It was further stated by the defendant that he was in the cultivating possession of the suit land. The plea with regard to jurisdiction of the Civil Court was also taken.

4. That learned trial Court on the basis of evidence led by the parties, held that the plaintiff was proved to be the owner of the suit land. It was further held by the learned trial Court that the defendant had not been able to prove any right to continue in possession of the suit land. The learned trial Court also held that the jurisdiction of the Civil Court was not shown to be barred in any manner, inasmuch as the defendant was shown to be merely a tress-passer on the suit land. Further, the claim of the plaintiff with regard to mesne profits of Rs. 1299.17p was also upheld. Accordingly, the suit filed by the plaintiff was decreed.

5. The defendant took up the matter in appeal. The learned first Appellate Court reappraised the entire evidence and came to the similar conclusions as had been arrived at by the learned trial Court. Accordingly, the appeal filed by the defendant was dismissed.

6. Still remaining dissatisfied defendant Teja Singh has approached this Court through the present Regular Second Appeal.

7. I have heard Shri R.S. Rai, the learned Counsel for the appellant and Shri Arihant Jain, the learned Counsel for the respondent and with their assistance have also gone through the record of the case.

8. Shri R.S. Rai, the learned Counsel for the appellant has vehemently argued that the suit filed by the plaintiff could not be treated to be within limitation, inasmuch as the evidence on record shows that the defendant had remained in possession

of the suit land for a period of more than 15-16 years prior to the filing of the suit. Accordingly, it has been argued that the two Courts below had committed an error of law in decreeing the suit filed by the plaintiff.

9. I am afraid, the aforesaid contention of the learned Counsel for the appellant is totally without merit.

10. A finding has been recorded by the Courts below, on the basis of the material available on the record, that the plaintiff was proved to be the owner of the suit land. The said finding cannot be said to be erroneous in any manner. The only defence taken by the defendant in the written statement is that he had been in cultivating possession of the suit land for more than 15-16 years prior to the filing of the suit.

11. In my considered view the aforesaid defence does not disentitle the plaintiff from claiming the possession of the suit land. Under Article 65 of the Limitation Act, a suit for possession on the basis of title can be filed by a plaintiff and such a suit is to be filed within 12 years from the date an adverse possession has been claimed by the defendant. In the present case, the defendant has not claimed any such adverse possession. Accordingly, the suit filed by the plaintiff could not be treated to be barred by limitation, in any manner. Mere long possession of the defendant on the suit land could not clothe him with any right. Once, the plaintiff is proved to be the title holder of the suit property, then obviously he had a right to seek possession thereof.

12. No other point has been urged.

13. No question of law, much less any substantial question of law, arises in the present appeal.

14. In view of the aforesaid discussion, there is no merit in the present appeal and the same is accordingly dismissed. However, there shall be no order as to costs.