

vs.

Satpal Sachdeva

..Respondent(s)

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This appeal is preferred by the State of Haryana and its Executive Engineer impugning the order passed by the High Court dismissing the second appeal which was also preferred by the appellants herein.

The controversy involved is short. The dispute relates to the agricultural land comprising in Khewat No. 183, Khata No. 271, Rect. & Killa Nos. 99/3-5 and 101/2-12 situated in Warpur Tehsil, District Sonapat. The respondent Satpal is said to be the owner of the land to the extent of 2/3 share which in all measures 5 Kanals 17 Marlas. There is no dispute about the fact that the entry of ownership has been in the name of Satpal. However, according to Satpal, the State of Haryana encroached upon a portion of the land described above to the extent of 4 Kanals 4 Marlas. Ultimately, Satpal came to know about the fact of possession of the State on 2.9.1980 and hence sent a notice under Section 80 C.P.C. to the State of Haryana on 18.8.1981. In reply to the notice under Section 80 C.P.C. defendant No. 3 the ...2/-

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Executive Engineer made a query from the plaintiff seeking particulars of the acquisition of the land by the State. Satpal obviously had not been in a position to supply any such information since the land in question had never been acquired. Ultimately, therefore, he had to file a suit for possession impleading the present appellants as defendants. The defendants raised a plea of adverse possession. They have constructed a rest house for the Police Department and the land in question falls within the premises as open piece of land but within the boundary wall. So far as the entry in the revenue records is concerned, learned counsel for the appellants Shri Neeraj Kumar Jain has vehemently urged that entry in favour of the State has been there indicating its possession since long but it was only in the year 1969-1970 that the entry of possession has also been recorded in favour of the plaintiff-respondent Satpal. It is submitted that such a change in the entry regarding possession over the land could not be made or changed unless due notice for the same was not served on the State whose possession was also recorded over the land prior to 1969-1970.

The two courts below, namely, the trial court and the first appellate court did not accept the plea of adverse possession raised on behalf of the appellants and recorded a finding that the evidence on the question of raising the boundary wall over the disputed land is not consistent. ...3/-

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Hence, the trial court decreed the suit and the decree was upheld by the first appellate court. The High Court in the second appeal declined to entertain it in view of the findings of fact recorded by two courts.

Looking to the factual position as indicated in the orders passed by the courts, it is evident that the land has been lying as an open piece of land. In response to the

notice under Section 80 C.P.C. served by the plaintiff-respondent to the State, the State authorities themselves made enquiries about the relevant documents relating to acquisition of the land. This fact is quite clear to indicate that the State has not been in possession of the land in question consciously adverse to the knowledge of the true owner. It appears that it had been under the impression that the land had been acquired by it. The adverse possession could be inferred only from the time, any construction was raised over the land which in this case, it is indicated, was done by raising a boundary wall. We find that the trial court and the first appellate court referring to the statements made by different witnesses have rightly come to the conclusion that the evidence has not been consistent as to when the wall was actually raised. This is a finding of fact which has been recorded after appreciation of the evidence available on the record. We do not find any good reason by which it may be said that the finding so recorded is perverse or has no evidence to support the same.

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In that view of the matter, we find no merit in the appeal. It is, accordingly, dismissed. There shall, however, be no order as to costs.

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.....J.
(BRIJESH KUMAR)

.....J.
(AR. LAKSHMANAN)

New Delhi;
February 6, 2003.