

APPELLATE CIVIL

Before Harnam Singh, J.

TEK CHAND, ETC.,—Defendants-Appellants

versus

JATI RAM, ETC.,—Plaintiffs-Respondents

Civil Regular Second Appeal No. 638 of 1949

1953

Sept. 16th.

Abandonment—Loss of right by—Whether a question of fact—If open to challenge in second appeal—Co-sharers—Adverse possession—Requisites of.

Held, that the question whether proprietary rights in suit land had been lost by abandonment is a question of fact and is not open to examination in second appeal unless it is shown that the finding does not proceed upon the consideration of the entire evidence on the record.

(1) I.L.R. 1945 Lah. 434 (F.B.)
(2) A.I.R. 1950 E.P. 79

Held further, that a co-sharer in order to prove title by prescription must prove some overt act amounting to ouster for a period of more than 12 years prior to the institution of the suit.

Regular second appeal from the decree of Shri Dalip Singh, District Judge, Karnal, dated the 14th day of May 1949, reversing that of Shri E. F. Barlow, Sub-Judge, 1st Class, Kaithal, dated the 12th April 1948, and granting the plaintiffs a decree for joint possession of the land in suit, but leaving the parties to bear their own costs throughout.

A. R. KAPUR and KRISHAN LAL, for Appellants.

RAJENDER NATH and D. N. AGGARWAL, for Respondents.

JUDGMENT

Harnam Singh,
J.

HARNAM SINGH, J. In civil suit No. 126 of 1947 the points that arose for decision were these :—

- (1) Whether the plaintiffs lost their proprietary rights in the land in suit by abandonment; and
- (2) Whether the defendants have become owners of the land in suit by prescription?

In dismissing the suit the Court found that the plaintiffs had lost their proprietary rights in the land in suit by abandonment and that defendants had become owners of the land in suit by prescription.

From the decree passed by the Court of first instance plaintiffs appealed.

In deciding the appeal the Court has found that the plaintiffs had not lost their proprietary rights in the land in suit by abandonment and that the defendants had not become owners of that land by adverse possession. In the result, the Court has set aside the judgment and the decree passed by the Court of first instance and passed a decree for joint possession of the land in suit. Parties have been left to bear their own costs.

From the decree passed on appeal the defendants have come up in further appeal to this Court. Tek Chand etc.
v.
Jati Ram etc.

Mr. Amolak Ram Kapur urges that the decision given on appeal that the plaintiffs had not lost their rights in the land in suit by abandonment is erroneous. In *Sain Ditta v. Ghulaman* (1), Stogdon, J., defined 'abandonment' in these terms :— Harnam Singh,
J.

"The meaning of the word as applied in this Province to absentee cases is an intentional quitting of possession by the proprietor, coupled with an intention not to resume it."

In *Sain Ditta v. Ghulaman* (1) Stogdon, J., thought that no quitting of possession is possible unless there is an intent on the part of the person in possession to divest himself entirely of the thing possessed. In plain English if a divestive intention does not exist, there is no absolute quitting or relinquishment of possession. Clearly, the question whether the plaintiffs had lost their proprietary rights in the land in suit by abandonment is a question of fact. If so, this Court is precluded from examining that finding unless it is shown that the finding does not proceed upon the consideration of the entire evidence on the record. In this connection *Noor Ilahi Maqbul Ilahi v. R. J. Wood and Company* (2) may be seen.

Mr. Amolak Ram Kapur appearing for the appellants has not been able to show a syllable of evidence on the record which has not been considered by the Court of appeal in reaching the conclusion that the extinction of proprietary rights by abandonment was not proved.

Mr. Amolak Ram Kapur then urges that the facts proved or admitted on the record prove that the defendants have become owners of the land

(1) 85 P.R. 1892

(2) A.I.R. 1928 Lah. 924

Tek Chand etc. in suit by prescription. In this connection it has
v. to be borne in mind that the plaintiffs and the
Jati Ram etc. defendants were co-sharers of the land in suit.
That being so, to prove title by prescription de-
fendants must prove some overt act amounting to
Harnam Singh, the ouster of the plaintiffs for a period of more
J. than twelve years prior to the institution of the
suit. In the opinion of the District Judge ouster
of the plaintiffs for a period of more than twelve
years is not proved.

Finding as I do that Regular Second Appeal
No. 638 of 1949 is concluded by findings of fact I
dismiss the appeal.

Having regard to the circumstances of the
case, I leave the parties to bear their own costs
throughout.