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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-3735-2019 (O&M)

Date of Decision : 23.08.2024

Mehtab

... Appellant(s)

Versus

Mahender

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Ivneet Singh Pabla, Advocate for the appellant.

ALKA SARIN, J. (Oral)

CM-10132-C-2019

This is an application for condonation of delay of 145 days in
refiling the appeal.

For the reasons stated in the application, delay of 145 days in
refiling the appeal is condoned. CM stands disposed off.

CM-10133-C-2019

This is an application for condonation of delay of 21 days in
filing the appeal.

For the reasons stated in the application, delay of 21 days in
filing the appeal is condoned. CM stands disposed off.

RSA-3735-2019

1. The present regular second appeal has been preferred by the
defendant-appellant challenging the judgment and decree dated 25.11.2016
passed by the Trial Court and the judgment and decree dated 08.08.2018
passed by the First Appellate Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a simpliciter suit for permanent injunction for restraining the defendant-appellant from dispossessing the plaintiff-respondent from the suit property fully described in para 4 of the plaint. The plaintiff-respondent also sought an injunction against the defendant-appellant for restraining him from changing the nature of the suit property by raising construction over the same and also from alienating the suit property. In the alternative it was prayed that in case the defendant-appellant succeeded in raising the construction over the suit property or in demolishing the plaintiff-respondent's house then the defendant-appellant may be directed to remove his construction and restore the plaintiff-respondent's house at his own expense. It was the case set up by the plaintiff-respondent that in the year 2008 late Ram Singh effected a family settlement regarding his properties between all his four sons and in the said settlement the plaintiff-respondent was given northern portion of a house constructed over plot bearing Khasra No.209 situated in village Daboda, Tehsil Bahadurgarh, District Jhajjar. The house given to the plaintiff-respondent was marked by 'ABCD' and was shown in the red colour in the site plan. The central portion of the house was given to the defendant-appellant which was marked by letters 'CDEF' and was shown in green colour and the southern portion marked by letters 'EFGH' and shown in blue colour was given to the plaintiff-respondent's brother - Surender. It was further averred that another house situated in the abadi of the village was given to Hansraj who is the 4th brother of the plaintiff-respondent. It was

further averred that the defendant-appellant wanted to grab some portion of the plaintiff-respondent's property and wanted to merge the same in his own share. Hence the present suit. Written statement was filed by the defendant-appellant raising preliminary objections regarding maintainability, locus standi, estoppel and the suit being bad for non-joinder of necessary parties. On merits it was denied that the plaintiff-respondent was ever given northern portion of the house constructed over Khasra No.209. It was further stated in the written statement that in the alleged family settlement the plaintiff-respondent and his brother - Hans Raj - were allotted portion marked by letters 'ABCDEFGHijkl' and the portion marked by letters 'TUVW' and the portion 'NSPO' shown with yellow colour in the site plan produced by the defendant-appellant was given to the defendant-appellant. It was further alleged that at the time of the family settlement the portion shown in plan No.1 and 3 of the site plan produced by the defendant-appellant were constructed houses whereas the portion shown in plan No.2 was lying vacant. It was further stated that the defendant-appellant had constructed his house with his own earnings and the plaintiff-respondent had no concern with the same.

3. On the basis of the pleadings the following issues were framed by the Trial Court :

1. Whether the plaintiff is entitled to a decree for permanent injunction on the grounds as prayed for ?
OPP
2. Whether the suit is not maintainable in the present form ? OPD
3. Whether the plaintiff has no locus standi and cause of action to file the present suit ? OPD

4. Whether the plaintiff has estopped from filing the present suit by his own act and conduct ? OPD
5. Whether the plaintiff has not come to the Court with clean hands ? OPD
6. Whether the suit is bad for mis-joinder and non-joinder of necessary parties ? OPD
7. Relief.

4. The plaintiff-respondent led his evidence however no evidence was led by the defendant-appellant and his evidence was closed by order. The Trial Court decreed the suit vide judgment and decree dated 25.11.2016. Aggrieved by the same, an appeal was preferred by the defendant-appellant which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 08.08.2018. Hence, the present regular second appeal.

5. Learned counsel for the defendant-appellant has vehemently contended that the suit was bad for mis-joinder and non-joinder of necessary parties inasmuch as admittedly besides the plaintiff-respondent and the defendant-appellant, there are two more brothers and the present suit could not have been filed without impleading them as parties. It is further the contention of the learned counsel that the agreement (Ex.C1) was not proved and was not signed by the defendant-appellant.

6. I have heard the learned counsel for the defendant-appellant.

7. In the present case the Trial Court framed a specific issue i.e. issue No.6 regarding the suit being bad for mis-joinder and non-joinder of necessary parties. The onus of this issue was cast upon the defendant-appellant. It has specifically been noticed by the Trial Court that the onus of issue Nos.2 to 6 was cast upon the defendant-appellant, however, the said

issues were not pressed during the course of the arguments nor any evidence was led regarding the same. Hence, the said issues were decided against the defendant-appellant. It does not now lie in the mouth of the defendant-appellant to raise the issue regarding the suit being bad for non-joinder of necessary parties. The second argument of the learned counsel that the agreement was not proved and was not signed by the defendant-appellant also deserves to be rejected on the ground that the defendant-appellant though filed his written statement but he chose not to lead any evidence. If it was a case where the agreement was not signed by the defendant-appellant, there is no reason why he could not lead the evidence of a Handwriting Expert to show that the signatures were not his. The Trial Court has specifically held that the agreement bears the signatures of the plaintiff-respondent as well as the defendant-appellant. There is not an iota of evidence which has been led by the defendant-appellant to disprove the same.

8. In view of the above, no fault can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

23.08.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO