

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Regular Second Appeal No.2440 of 2011 (O&M)
Date of Decision: August 27, 2015.**

Sona Devi and others

.....APPELLANT(s).

VERSUS

Rohtash and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Malik, Advocate
for the appellants.

Ms. Kamlesh Khatri, Advocate
for respondents No.1 and 2.

SURINDER GUPTA, J.

Appellants-plaintiffs have filed this regular second appeal against the judgment dated 28.02.2011 of the first Appellate Court, whereby the decree dated 14.08.2010 passed by Civil Judge (Junior Division), Sonipat was modified and the appellants-plaintiffs were restrained from encroaching upon the portion AHGK shown in the site plan Ex.P1 and the suit of the appellants-plaintiffs was dismissed with regard to the wall FJGH. The respondents-defendants were allowed right to demolish the wall and construct the same at the same point.

(The plaintiffs(appellants) and defendants(respondents) in the civil suit will be referred as plaintiffs and defendants in later part of this

judgment.)

The plaintiffs filed suit seeking relief of injunction as follows:-

“A decree for permanent injunction restraining the defendants from demolishing the wall of the house of the plaintiffs marked by letters JGH and also encroaching the portion of the house of the plaintiffs marked by letters KGAH enclosed with the site plan of the land comprised in rectangle and killa No.209 measuring 1 kanal 8 marlas situation within the revenue estate of village Jharot, Tehsil Kharkhoda, District Sonipat and land mentioned above i.e. rectangle No.209. The wall described by letters JGH was also constructed by the ancestor of the plaintiff. The ancestor of the plaintiffs has died since a few years back. The plaintiffs have also constructed bath room and kitchen adjoining to the wall marked by letter J. The plaintiffs are owner in possession of the above said house and using the same for all purposes, by closing the door of the plaintiffs illegally and forcibly may kindly be passed in favour of the plaintiffs and against the defendants with costs.”

The suit was decreed by Civil Judge (Junior Division), Sonipat and the defendants were restrained from demolishing the wall marked by letters JGH in site plan Ex.P1 and encroaching upon area marked by letters KGHA.

The case of the plaintiffs, in brief, is that over the portion of the plot shown with letters ABCDEFGHJ, they have raised construction of their house. The wall JGH as shown in the site plan was constructed by their ancestors and adjoining the wall, they also constructed bathroom and kitchen shown as JG in the site plan. The ancestors of plaintiffs and defendants

along with one Bani Singh were owner in possession of the plot bearing rectangle and killa No.209 measuring 1 kanal 8 marlas situated in the revenue estate of village Jharot, Tehsil Kharkhoda, District Sonipat. Bani Singh and defendants constructed their houses over 1/3rd share of their land. A civil suit titled Rohtash Vs. Surat Singh was filed by defendant No.1 Rohtash seeking possession by way of partition with consequential relief of permanent injunction alleging encroachment of 32 square yards of his land. That suit was dismissed on 08.01.2005 and thereafter, the defendants started threatening to demolish the disputed wall marked with letters JGH and also to encroach upon the land marked with letters KGHA resulting in filing of the instant suit.

In the written statement, defendants contested the claim of the plaintiffs inter-alia pleading that the disputed wall FJGH as shown in the site plan was constructed by them along with other construction in their house. This wall was not constructed by ancestors of the plaintiffs, as such, the wall JGH belong to them. This wall was in dilapidated condition and defendants have every right to demolish and reconstruct the same.

Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the defendants can be restrained from demolishing the wall of the house of the plaintiffs 'KGAH', as alleged, if so to what effect? OPP
- (2) Whether the suit is not maintainable in the present form? OPD
- (3) Whether the suit is barred under Section 41(h) of the Specific Relief Act? OPD
- (4) Relief.

While recording the finding on issue No.1 in favour of plaintiffs,

Civil Judge (Junior Division) Sonipat observed as follows:-

“The site plan Ex.P1 is an admitted document which also coincides with the site plan Ex.P4 produced by the present defendant No.1 Rohtash in the earlier civil suit instituted by him in the year 1998 for partition of the land in dispute. The existence of two rooms (whether a bath-room or a kitchen kotharis or obris) adjoining the wall 'JG' is also an admitted fact. The plaintiffs produced sufficient evidence, oral and documentary, in support of their version. While on the contrary, the defendants failed to demolish the case of the plaintiffs and rather, fortified the case of the plaintiffs by admitting the existing position at the spot. It has also come in the evidence that there is a passage towards the western side of the house of the defendants, meant for ingress and outgress to the house of plaintiffs and the same is denoted as 'KGHA' in the site plan. After considering the rival contentions of the parties and appreciating the evidence on the record, it is quite visible that the rights of the plaintiffs would be infringed if the wall 'FJGH' is demolished by the defendants and the latter encroached upon the area 'KGHA', thereby obstructing the free movement of the plaintiff. As such, issue no.1 is decided in favour of the plaintiffs and against the defendants.”

In appeal, the first appellate Court observed as follows:-

- (i) Plaintiffs and defendants are cosharers of the property bearing killa No.209 which has not been partitioned by metes and bounds so far.
- (ii) In the property bearing killa No.209, Bani Singh, plaintiffs and defendants had constructed their houses. The dispute pertains to the portion of the suit property marked as 'KGHA' and the wall 'FJGH' as shown in the

site plan. Both the parties were staking claim over the above wall as exclusively owned by them.

(iii) The passage 'KGHJ' is exclusively owned by the plaintiffs.

(iv) The onus was on the plaintiffs-respondents to prove that the wall was exclusively owned by them. One of the respondents-plaintiffs Dharampal appeared into the witness box as PW-1. In cross-examination he deposed that his uncle Nihal Singh and Bani Singh also constructed their houses about 40 years ago on the said plot but he is not in a position to tell the area under their possession. He further admitted that his father Surat Singh constructed the house over the said plot about 40 years ago but the house was constructed in the half portion and half portion was lying vacant. He further deposed that they constructed kitchen and bathroom towards the back side of the house of Rohtash. He further deposed that his father constructed kitchen and bathroom 20 years ago. From the cross-examination of PW-1 Dharampal it is clear that father of Rohtash appellant etc. constructed their houses 40 years ago. Meaning thereby at the time of construction of the houses, they might have constructed the wall also whereas the kitchen and bathroom adjoining to the wall JH was constructed 20 years ago i.e. after construction of the wall GJF. So the question of wall belonging to the plaintiffs-respondents does not arise as adjoining to this wall the house of the appellants-respondents were constructed much earlier to the construction raised by the plaintiffs-appellants(sic respondents). Thus from the evidence adduced on the file, it is held that the wall FGJH is not exclusively owned by the plaintiffs-respondents and the defendants have

wrongly restrained the defendants from demolishing the wall marked by letters JGH.

With the above observations, the respondents were allowed to demolish and reconstruct the wall at the same point.

Learned counsel for the appellants-plaintiffs has not been able to assail the above observation of the first Appellate Court. This plea of the plaintiffs that the wall in dispute is exclusively owned by them has been rightly discarded by the first Appellate Court.

During the course of arguments, photographs of the wall have been produced which have not been disputed by learned counsel for the appellants-plaintiffs. These photographs show that the wall is in bad condition and require immediate reconstruction. No prejudice shall be caused to the plaintiffs if the wall is reconstructed at its original site by the defendants.

In view of the facts and circumstances discussed above, I find no legal or factual infirmity in the judgment passed by the first Appellate Court, calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits. Dismissed.

August 27, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE