

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1040 of 2012(O&M)
Date of decision : August 10, 2015

Dass Ram and others

..... Appellants

Versus

Sher Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S. S. Swaich, Advocate
for the appellants.

Mr. Sham Lal Bhalla, Advocate
for respondent No.1.

Mr. B. S. Saini, Advocate
for respondent No. 2.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The challenge in the present appeal is to the impugned judgment and decrees dated 25.8.2010 and 10.10.2011 of the Courts below whereby the suit for permanent injunction filed by the respondents-plaintiffs had been decreed and the counter claim filed by the appellants-defendant Nos. 1 to 3 has been dismissed.

Learned counsel for the appellants-defendant Nos. 1 to 3 submits that both plaintiffs and defendant Nos. 1 to 3 have purchased the land from one common owner Tara Singh measuring 3 Marlas and 10 Marlas respectively. Thereafter both of them added 1 marlas and 2 ¼ Marla respectively. In essence, the plaintiff

became owner of 4 Marlas and appellant-defendant became owner of 12 ¼ Marlas. He further submits that the sale deed of 1 Marla by the plaintiff is dated 7.2.2001 whereas that of the defendant was 23.1.2007. He submits that both the courts below have committed illegality and perversity in decreeing the suit and dismissing the counter claim on the premise that the respondents-plaintiffs have raised the construction after the sale deed dated 7.2.2001 whereas the defendants-appellants had purchased it in the year 2007. He further submits that the counter claim vide which the appellants-defendants sought injunction that the plaintiffs had two openings one to the southern side and other to the western side shown vide site plan Ex. PW3/B has erroneously been dismissed.

Learned counsel appearing on behalf of the plaintiffs-respondents submits that the decrees passed by the lower courts is fair, legal and justified. There is no illegality and perversity in the same.

It is a matter of record that plaintiff-respondent No.1 had raised the construction on his plot i.e. 4 Marlas immediately after purchase vide sale deed dated 7.2.2001 and the appellants-defendants did not raise any objection and the suit was filed on 28.3.2009. The defendants are estopped from raising counter claim and rightly so that they have been enjoined not to interfere in the peaceful possession of the plaintiffs-respondents.

I have heard learned counsel for the parties and appraised the paper book.

It is discernible from site plan Ex. PW3/B that there

are two openings which comes to the house of the respondents-plaintiffs i.e one from west side and other from southern side. The opening at west side is causing hindrance and disturbance to the appellant-defendant No.1 who intends to raise construction in plot measuring 2 ¼ Marlas purchased in 2007. The site plan Ex. PW3/B is not in dispute. The finding rendered by the lower appellate court that width of the street at one place is 20' and at other place 35'. Though, findings are based on the examination of site plan but the fact remains that the offset of the same is not straight on account of construction raised by the plaintiff on his piece of land whereas the appellants-defendants could not raise the construction because of the opening on the western side as the western side would however, be part of the common wall or separate wall intended to be raised.

I find substance in the argument raised by the learned counsel for the appellant and is of the opinion that following substantial questions of law arise for answering the controversy between the parties to the *lis*:-

Whether the plaintiff has got any right to restrain the appellant/defendants from raising any construction or using the suit property the way they like, which is a private property of the appellants/defendants, without establishing any right by way of easement of necessity or easement by prescription over the private property of the appellants/defendants?

ii) Whether the Courts below grossly erred by restraining the appellants/defendants from raising

any construction in the suit land which is a private property of the appellants/defendants without any right of easement of necessity or prescription of the plaintiff over the same?

iii)Whether the Courts below erred by ignoring the relevant and cogent piece of evidence by way of admission of the plaintiff himself in his cross-examination?

iv)Whether the Courts below further erred by misreading the evidence in the shape of site plan and admission of the plaintiff in his cross-examination regarding the factum of existence of street on the southern side of the property in dispute abutting both the houses of plaintiff as well as defendants and other neighbourhood people and thereby resulting into miscarriage of justice?

v)Whether the Courts below grossly erred by dismissing the counter claim of the appellants/defendants and the findings in this regard are totally against the pleadings and evidence on record being result of misreading of the same and error apparent on the record.?

There is another aspect of the matter that the plaintiff candidly admitted in the cross examination that the area on

the rasta is same area which had been purchased and he purchased his plot from the same very area. He further admitted that Tara Singh-defendant is owner of both the areas and Jaswant Kaur had purchased the site from Tara Singh the existence of street on his side was also admitted but he did not know its width. There is one opening on the southern side of the house.

In view of what has been observed, herein above, the finding rendered by the lower appellate court that width of the street is uneven in my opinion, is not only erroneous but perverse. Accordingly, the appeal is allowed to the extent that suit filed by the respondents-plaintiffs is dismissed and the counter claim filed by appellant-defendant Nos. 1 and 2 whereby they sought injunction against respondent-plaintiff from closing the illegal projection towards the western side of the property is shown by letter X to Y in site plan Ex. DW2/B is decreed.

Decree sheet be prepared.

Record of the trial court be sent back.

(AMIT RAWAL)
JUDGE

August 10 , 2015
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