

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Regular Second Appeal No. 210 of 2012 (O&M)
Date of decision: 24.7.2015

Ganga Ram Sharma

.. Appellant

v.

Keso Ram and others

..Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Amrita Verma, Advocate for
Mr. Raj Kumar Rana, Advocate for the appellant.

...

Rajesh Bindal J.

The plaintiff is before this court impugning the judgments and decrees of both the courts below, whereby the suit filed by him for permanent injunction restraining the defendants from raising a pucca chabutra on the place shown in the site plan, was dismissed.

The learned lower appellate court, while upholding the judgment and decree of the trial court, observed that in earlier litigation between the parties, the portion in dispute was held to be part of the public street. That matter came up before this court. The relevant part thereof is extracted below:

“19. A bare perusal of judgment Ex. PW3/A rendered by the court of Sh. S. K. Gupta, the then Ld. Sub Judge, Ambala would indicate that suit filed by plaintiff was partly decreed. The defendants No. 1 and 2 of that case were same as of present case, were restrained from interfering or encroaching the first part of the chabutra in possession of the plaintiff. However, qua second part of the chabutra, the suit of the

plaintiff was dismissed and it was held that same was part of public street and both the parties had right to use the same for ingress and egress to their respective houses. Decree sheet is Ex. PW3/B. The copy of said judgment is also placed on record Ex. D1. Perusal of certified copy of judgment dated 8.5.1998, Ex. D3, passed by the court of Sh. R. C. Bansal, the then learned Addl. District Judge, Ambala would indicate that appeal preferred by Ganga Ram appellant/plaintiff against judgment and decree dated 25.4.1997 was dismissed with costs. The plaintiff/appellant Ganga Ram approached the Hon'ble Punjab and Haryana High Court at Chandigarh and his RSA was dismissed as so evident from perusal of Ex. D5. It has been held by Hon'ble High Court that lower portion of the chabutra in front of the house No. 1426/1 of the house of plaintiff is part of public street and both the parties have right to use the same for ingress and egress. It has not been held to be private property of the house of plaintiff of part of House No. 1426/1 owned by plaintiff. The plaintiff still claims that the front portion of the chabutra is owned by him as so mentioned in para No. 1 of his pleadings. Hence, plaintiff is agitating the matter, which he has already lost even upto Hon'ble High Court.”

In view of the findings in the earlier litigation between the parties pertaining to the same dispute, in my opinion, there is no error in the judgments and decrees of the learned courts below in dismissing the suit filed by the appellant-plaintiff. The findings cannot be said to be perverse. No substantial question of law arises in the present appeal. The same is, accordingly, dismissed.

(Rajesh Bindal)
Judge

24.7.2015
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