

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

RSA No. 2940 of 2012 (O&M)

Date of decision : 17.7.2015

Sham Sunder

... Appellant

versus

Banarsi Lal

... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Mandeep Singh Sachdev, Advocate, for the appellant.

Rajesh Bindal, J.

The defendant has approached this Court impugning the judgments and decrees of both the Courts below whereby the suit filed by the respondent-plaintiff for injunction restraining the defendant from encroaching upon House No. EC-324, Gali Mandir Sita Ram, near Khingra Gate, Jalandhar or for raising any construction on any part thereof, was decreed.

In the case in hand, the respondent-plaintiff filed the suit for injunction restraining the defendant from encroaching upon House No. EC-324, Gali Mandir Sita Ram, near Khingra Gate, Jalandhar or for raising any construction on any part thereof. In the earlier suit filed by the appellant, which was dismissed on 16.10.1986, the respondent-plaintiff was held to be the owner of the suit property. It was claimed in the present suit that Late Ram Lubhaya was allotted the house in question vide conveyance deed way back in the year 1986. The defendant had been trying to disturb the possession of the appellant time and again, hence, the suit in question was filed. The trial Court decreed the suit in favour of the plaintiff, whereas the learned Lower Appellate Court dismissed the appeal filed by the present appellant. It is against the concurrent findings of fact recorded by both the Courts below that the appellant-defendant is before this Court.

The learned Lower Appellate Court while dealing with the contentions raised by the appellant and evidence produced on record by the parties noticed that the site plan, Ex. P1, produced by the plaintiff on record was not disputed by the appellant-defendant. He further admitted that the earlier suit filed by him was dismissed on 16.10.1986 and the appeal against that was dismissed as withdrawn on 17.10.1990. He further admitted that though he had sought liberty to file a fresh suit but never filed. He further admitted that the properties bearing no. EC-324 and EC-326 are separate having no concern with each other. He further admitted that EC-324 was allotted to late Ram Lubhaya. He further admitted in his cross-examination that he has no concern with the wall on the western side of the property of the plaintiff i.e. EC-324. He volunteered to state that wall was damaged in the rain and was got constructed by the plaintiff.

In view of the aforesaid admissions made by the appellant in his evidence, in my opinion, there is no illegality committed by the learned Courts below in decreeing the suit filed by the respondent-plaintiff. The findings cannot be said to be perverse. No substantial question of law arises. The appeal is accordingly dismissed.

17.7.2015

vs

(Rajesh Bindal)
Judge