

RSA No.4381 of 2013 (O&M)
and RSA No.4390 of 2013

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

RSA No.4381 of 2013 (O&M)
Date of Decision: December 21, 2015

Jasbir Singh & others

...Appellants

Versus

Gian Singh

...Respondent

(2)

RSA No.4390 of 2013
Date of Decision: December 21, 2015

Jasbir Singh

...Appellant

Versus

Gian Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rajinder Goyal, Advocate
for the appellants.

Mr. Gulzar Mohd., Advocate
for the caveator.

AUGUSTINE GEORGE MASIH, J. (Oral):

By this order, I propose to decide two Regular Second Appeals i.e. RSA Nos.4381 and 4390 of 2013 which have been preferred by the appellant-defendants challenging the judgments and decree passed by the Civil Judge (Junior Division), Jalandhar, dated 21.08.2012, whereby, the suit preferred by the respondent-plaintiff seeking decree of permanent injunction restraining the

RSA No.4381 of 2013 (O&M)
and RSA No.4390 of 2013

appellant-defendants from alienating or transferring or creating charge or causing damage or raising construction over the double storey house constructed over the area measuring four marlas located in the revenue estate of VPO Jandu Singha, Tehsil and District Jalandhar, as detailed in the head note, stands decreed and counter-claim preferred by the appellant-defendants claiming themselves to be owners in possession of the house in question has been dismissed, appeals against which preferred by the appellant-defendants also stands dismissed by the Additional District Judge, Jalandhar, on 13.08.2013.

It is the contention of the learned counsel for the appellants that the judgments and decree passed by the Courts below are not sustainable in law as the respondent-plaintiff has given a piece of land to the appellant-defendants and on the said land, they have constructed the house in question, of which, it is asserted that a licence was given which has been revoked. He contends that since the construction of the house has been made by the appellant-defendants, to which, the respondent-plaintiff did not object at that time, the licence as has been sought to be revoked could not have been so done in view of Section 60 (b) of the Indian Easements Act, 1882. He, accordingly, contends that these appeals be allowed by setting aside the judgments and decree passed by the Courts below and decreeing the cross-objection of the

RSA No.4381 of 2013 (O&M)
and RSA No.4390 of 2013

appellant-defendants.

I have considered the submissions made by the learned counsel for the appellants and with his able assistance, have gone through the impugned judgments but do not find the assertion of the counsel to be acceptable.

As per the pleadings, it was asserted by the respondent-plaintiff that he had constructed the house in question and thereafter, a licence was given to the appellant-defendants to reside therein which has been duly revoked. The assertion of the counsel for the appellants, thus, that the vacant piece of land was given to the appellant-defendant, cannot be accepted. Further the respondent-plaintiff has appeared before the Court and has reiterated the assertions made in the plaint. Although, in the examination-in-chief, there is a mention of the ground-floor having been constructed by him and thus, it could be said that the first-floor have been constructed by the appellant-defendants but that would not inure to the benefit of the respondent-plaintiff especially when they have not been able to produce any evidence on record which would prove that they had got the said house constructed. No evidence except the oral statement of one Laxmi (DW-1) who had appeared and stated that the construction was raised at the instance of Jasbir Singh who had brought the construction material and paid the labour charges has been led. No receipts have been

RSA No.4381 of 2013 (O&M)
and RSA No.4390 of 2013

produced with regard to purchase of construction material nor has any bill with regard to payment of labour charges or receipts thereof been brought on record. Even Jasbir Singh himself did not appear before the Court to prove his case. An assertion was made that the sale deed (Ex.P-2) in favour of respondent-plaintiff was a *benami* transaction as the finances have been arranged by the appellant-defendant Jasbir Singh and he had paid the consideration amount, which also cannot be accepted in the light of the fact that he has not been able to show the resources with regard to the finances which he has asserted, was paid by him as consideration amount. Further, at the time of the execution of the sale deed in favour of the respondent-plaintiff, he had not appeared as a witness, rather, Gurmukh Singh one of his brothers had appeared as an attesting witness. There is overwhelming evidence showing that the property in question is the ownership of the respondent-plaintiff and further that he has constructed the house thereon which fact the appellant-defendants have failed to dislodge.

A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

RSA No.4381 of 2013 (O&M)
and RSA No.4390 of 2013

No substantial question of law arises in these appeals which requires consideration of this Court. Therefore, finding no merit in these appeals, the same stand dismissed.

CM No.11796-C of 2013

In view of the order passed in the main appeal, the present application for staying the operation of the impugned judgments and decree passed by the Courts below during the pendency of the appeal, has become infructuous.

Disposed of as such.

December 21, 2015
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE