

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.618 of 2013 (O&M)
Date of Decision: August 03, 2015

Beant Singh

...Appellant

Versus

Gian Singh Bhambra and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.K.S.Dadwal, Advocate
 for the appellant.

INDERJIT SINGH, J.

Appellant-plaintiff Beant Singh has filed this regular second appeal against respondents Gian Singh Bhambra and others, challenging the impugned judgment and decree dated 27.07.2009 passed by learned Addl. Civil Judge (Senior Division) Hoshiarpur, vide which the suit of the plaintiff for permanent injunction was dismissed and counter claim of the defendant No.2 was decreed and also the judgment and decree dated 05.09.2012 passed by learned Addl. District Judge (Adhoc) Fast Track Court, Hoshiarpur, vide which the appeal filed by appellant-plaintiff was dismissed.

The brief facts of the case are that plaintiff-appellant Beant Singh filed a suit against defendants Gurbachan Singh, Kuldip Singh and Gurdial Singh for permanent injunction restraining the defendants from interfering in any way in peaceful possession of plaintiff over plot shown in red in site plan and marked 'ABCDEFGH' and from raising any construction over wall 'AH' and from opening any doors, windows,

ventilation etc. it is the case of the plaintiff that he is owner in possession of the property in dispute. Said plot was given to his grandfather Kirpa Ram and his brother Hammu Ram in exchange by Bhagwan Singh and Gurdev Singh about 60 years back and memorandum of exchange was reduced into writing. Said plot from the time of said exchange was earlier in possession of predecessor in interest of plaintiff and now is in possession of plaintiff and said plot adjoins the house of the plaintiff. It is further the case of the plaintiff that he has constructed store and bathroom in the said site. Defendants are owners of plot on western side of said plot in dispute, wherein they have started raising construction of house. The defendants have no concern of whatsoever with the plot in dispute. It is also the case of the plaintiff that defendants have no right to raise any construction over the wall AH etc.

Upon notice, suit was contested by the defendants. It is stated that plaintiff has no locus standi to file the suit as he has got no right, title or interest in the property in dispute as residential house situated on eastern side of property in dispute has been succeeded by Charan Singh, brother of the plaintiff by way of Will executed by their predecessor on 28.03.1993. It is also stated that from the time of ancestors, property in dispute is being used as private passage and common place of parties. Plaintiff has encroached upon common vacant place from point Z to Y, as shown in red in site plan of defendants. Wall marked A to H shown as AB in the site plan of defendants is in the exclusive ownership of defendants and this wall is

very old one. There was a door at point A1 to B shown in site plan of the defendants and it was opening in common vacant place and during the days of terrorism, it was closed by defendants in order to secure their residential house. The common vacant place is from X to Y upto Z to Y as shown in site plan submitted by defendants and plaintiff has encroached upon the same in illegal manner. Plaintiff has also placed loose bricks, thereby causing hindrance in common street. It is also the case of the defendant that this common street and common vacant place is meant for air, light and other ventilation to house of the parties and plaintiff has no right, title or interest in the same, except from using it as common.

Defendant No.2 after demolishing the old construction, is constructing that portion in the shape of kothi and lintel is yet to be placed on said construction. The wall in question is old one and that is still intact. Defendant No.2 also filed counter-claim pleading that street in question is common street and at the end of the the street, there is common vacant place. Written statement to counter claim was also filed by the plaintiff.

After framing the issues and after the parties led evidence, learned Addl. Civil Judge (Senior Division) Hoshiarpur, dismissed the suit of the plaintiff and decreed the counter claim of defendant No.2 for mandatory injunction directing the plaintiff to remove the loose bricks at point S to P and encroachment at point Z to Y. An appeal was filed by the plaintiff-appellant and the same was also dismissed by learned Addl. District Judge (Adhoc), Fast Track Court, Hoshiarpur,

vide judgment and decree dated 05.09.2012.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by appellant-plaintiff.

At the time of arguments, learned counsel for the appellant argued that the findings given by the Courts below are not as per evidence and are perverse.

I have heard learned counsel for the appellant and have gone through the record.

From the record, I find that the appellant-plaintiff is relying upon one document, according to which, grandfather of plaintiff namely Kirpa Ram and his brother Hammu Ram executed an exchange with Bhagwan Singh and Gurdev Singh and disputed plot was given to grandfather of plaintiff and his brother Hammu Ram. I have considered this document. This is a unregistered document. The perusal of the contents of this document shows that it is an exchange deed and not memorandum of exchange. As per this document, the exchange took place. Therefore, this document being exchange deed, requires registration. It is not disputed that oral exchange is permissible but if the document is memorandum of exchange scribed only after the oral partition, then it does not require any registration. If the exchange took place by this document, then it amounts to exchange deed, which requires registration. No reliance can be put on this document for the purpose of ownership, it being unregistered document.

Further, the plaintiff in cross-examination admitted that the

street in dispute is 60 to 70 years old. He also admitted its length to be 30 feet and described it as street again. He also said in cross-examination that he does not know as to where the land given in exchange is situated. In the cross-examination, he further stated that the area shown as courtyard belongs to Krishan Singh and Sadhu Singh and it is part of their house. He also stated that for ingress and outgress to their house, there is disputed street only. Beant Singh further admitted that since the age of his discretion, he has been seeing the site in dispute being used as street. When the plaintiff himself admitting that property in dispute is street used for ingress and outgress of the house from the age of his discretion, then how he can claim the property in dispute as his personal property.

The findings given by both the Courts below are concurrent, as per law and evidence. There is nothing on the record to show as to which evidence has been misread and how the findings given by the Courts below are perverse.

In view of the above discussion, I find that the judgments and decrees passed by the Courts below are correct, as per evidence and law and do not require any interference from this Court and the same are upheld. No substantial question of law arises in the present regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

August 03, 2015
Vgulati

(INDERJIT SINGH)
JUDGE